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TRANSACTIONS

OF THE

HIGH COURT OF CHANCERY.

THE TRANSACTIONS

OF THE

High Court of Chancery,

BOTH BY

PRACTICE AND PRECEDENT,

WITH THE

FEES THEREUNTO BELONGING,

AND

ALL SPECIAL ORDERS IN EXTRAORDINARY CASES,

Which are to be found in the Register's Office, as they are quoted by Terms, Years, and Books.

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Godderick contra *Swansell*, an award decreed by this Court, and a man bound, though no party to the exchange, 9 *Jac. li. B. fo.* 1456.

Award decreed no party to the exchange bound.

Bishop contra *Bishop*, a voluntary award decreed, but some part being to bind tenant in tail not to alien, the Court would not decree that, but gives relief against the award, being to make a perpetuity, and a man not bound to answer, as to cause him to be subject to the penalty of a bond, and the Statute of Limitation (as this case stands) is overruled, *Mich.* 15 *Car.*

Colt contra *Smith*, an award made by *Cordall* and the bishop forty years since, decreed against the successor for the manner of tithing, *Mich.* 21 *Car.*

BAIL.

A bail in this Court, or in the civil law, is discharged upon bringing in the principal, as he may at the common law.

Archboll contra *Barrell*, 23 *and* 24 *Eliz.*

BARGAIN.

21. Bargain for horses by doubling of oats.

Rogers contra *Smith*, the suit is touching two horses, for which the defendant was to pay by doubling an oat, demurred because but an action of the case, overruled in 15 *Car.*

Fage contra *Browne*, concerning the buying

For a lute by the strings.

buying of a lute by the strings, in 1 or 2 *Car.*

22. Barrister being free of a company.

BARRISTER.

Swallow contra *Man*, a barrister of the Temple, being free of a company, and by his will disposeth of profits of lands, how far shall it trench upon the custom, *Pasch.* 25 *Car.*

BILL.

One which had a covenant to deliver evidences, exhibited his bill, supposing certain deeds to remain in the covenantor's hand, the opinion of the Court was, the defendant needed not to answer, because he should thereby disclose cause of forfeiture of the bond. *Wolgrave* contra *Coe*, *Mich.* 1595, 38 *Eliz.*

A bill to examine witnesses in perpetual memory touching common not thought fit, but a bill upon the title, and to examine witnesses and publication thereupon, and then to go to law. *Throckmorton* contra *Griffin*, 38 *and* 39 *Eliz.*

The father complaineth for a lease, which is in the son to the father's use. *Pomeroy* contra *Ford*, *Pasch.* 1597.

A bill upon a penal statute, claiming one half to the queen, and another to the party, disallowed by my lord's opinion. *Coward* and *West*, *Trin.* 39 *Eliz.* though not mentioned in the order.

Clifford

Clifford contra *Adams*, 11 and 12 *Eliz. li. A. fo.* 294, the plaintiff having put in his bill being misconceived, notwithstanding answers put in, and proceedings had thereupon, was taken off the file and new put in.

Bill taken off the file and new put on.

Stanley contra *Young*, *Hil.* 1590, the Lord Chancellor's opinion was, that the old and new proofs should be read upon a new bill, to prove better matter.

Old and new proofs read upon a new bill.

Cromer exhibited a bill against *Champney*, to be relieved of a bond made for money won at dice, the defendant would have been dismissed, but ordered to answer it, 22d *May*, 38 *Eliz.*

Bill for money won at dice.

And the like case between *Hubbard* and the Lord *Compton*, about 44 *Eliz.*

Piggot contra *Parson*, 44 *Eliz.* because the ground of the bill is for a legacy, thought fit to be dismissed.

Bill for legacy dismissed.

Pennington contra *Cooke*, a bill to prevent dower, being her husband was past memory at time of marriage, but it was dismissed to law, 3 *Jac. li. B. fo.* 6.

Hare contra *Hide*, a bill preferred against an infant, and he ordered to answer, *Hil.* 3 *Jac. and Pasch. Prox'.*

Scoble contra *Holman*, if the plaintiff's bill were exhibited before judgment, the defendant's proceedings to stay, or else not, 38 *Eliz. fo.* 79.

Vaux

No bill of revivor after marriage.

Vaux contra *Dowell*, 39 *Eliz. lib. B. fo.* 132, no bill of revivor after marriage.

Dale contra *Dale*, the like.

In 25 *Eliz. Sloper* contra *Bacon.*

Creswell contra *Luther*, 19 *and* 20 *Eliz. li. A. fo.* 210, a bill to find who is tenant of land whereby to ground an action.

No bill of review admitted upon new matter, *Lovegraie* contra *Webb*, 3 *Jac.* 259. *Mudget* contra *Davies*, 15 *Jac. li. B.*

Bill to be relieved upon an escape.

Carnsew contra *Coad*, a sheriff preferred his bill, to have relief upon an escape of one that was in execution, *Mich.* 20 *Jac. li. B. fo.* 306.

Reynell contra *Quintin*, *li. A.* 7 *Jac. fo.* 933, contrary.

Reynell contra *Longcastle*, *Hil.* 19 *Jac. Boll* and *Farrington*, 10 *Jac. li. B. fo.* 178.

A bill in the nature of an avowry for rent.

Cæsar contra *Cater*, *Pasch.* 9 *Car.* a bill in the nature of an avowry for rent, and service, the defendant ordered to set out a place, and stand upon right, or go to hearing.

Bill to reverse a decree at *York*.

Askwith contra *Turnor*, *Mich.* 1633, a decree at *York*, a bill preferred in this Court to reverse it, the matter was heard at large, notwithstanding any pleading of the defendant.

Preston contra *Proctar*, 2 *Car.*

Boucher contra *Barwicke*, *Pasch. vel Trin.* 10 *Car.*

Alexander

Alexander contra *Cresheld*, a general and voluntary promise (and no consideration) of the son, to disengage and pay the father's debts, where no advancement by his father, dismissed, 28th *October*, 7 *Car*.

Bill a voluntary promise without preferment dismissed.

Cowley contra *Anderson*, 20 *Jac. li. B. fo.* 77, the defendant conveyed land to the use of his daughters, the plaintiff married one, and had children by her who are dead, the plaintiff prefers his bill to be tenant by curtesy, but held not so, because the daughters had joint estates, and so goes to the survivor.

Bill to be tenant by curtesy.

Clifford contra *Laughton*, the plaintiff prefers a bill in this Court against the defendant, supposing that more lands passed than was intended, but because the defendant was a purchaser upon valuable consideration, would give no relief, 4 *Jac. li. B. fo.* 340.

Bill pretending more land passed than was intended, yet no relief against the purchaser.

Kingsmill contra *Etheridge*, the defendant sueth for contribution after judgment, which was assigned for that purpose in *June*, 20 *Jac.*

Bill for contribution to a surety.

Newman contra *Lloyd*, a demurrer overruled about 20 *Jac.*

Hill Mil'. contra *Penty*, *Walsh and al'*. about 17 *Jac.* another in the queen's time between *Agar* and *Curson*.

Hide contra *Burges*, upon a bond, 3 *Car*. a bill preferred to be relieved upon point of escape, but dismissed.

Bill upon escape not relieved here.

Brackin

Brackin contra *Dom. Perpoint*, 25th *November*, 21 *Jac.*

Reynell contra *Darling*, 6th *October*, 19 *Jac.*

Reynell contra *Whiting*, 14th *May*, 19 *Jac.*

Bill to find a tenant to ground an action.

Dom' Kempe contra *Risbie*, a bill to find a tenant to an estate whereby to ground an action of dower, in *Mich.* 2 *Car.*

For an escape.

Lello contra *Lamplugh*, concerning an escape, *Mich.* 5 *Car.*

Tenant *pur auter vie* prefers a bill, or an executor sues for land.

Hemming contra *Leigh*, *tenant pur auter vie*, exhibited a bill, or an executor sues for title of land, whether this shall hold in *li. B. Car.* 6, about two years after referred to Master Justice *Jones.*

For fees dismissed.

Harding contra *Tedwell*, a bill for fees was dismissed, and *Moore* contra *Rowe*, 5 *Car.*

To set out boundaries.

Yelverton contra *Rolfe*, 6 *Car.*

Tipping contra *Chamberlaine*, a suit to set out boundaries, *Mich.* 2 *Car.*

Two bills, the first in the Court of Requests, the other here, the defendant pleads the proceedings there overruled.

Samuel contra *Samuel*, a bill first preferred in the Court of Requests, and the same being mistaken there, prefers another bill here, the defendant pleads the proceedings in that Court, notwithstanding overruled, 9 *Car.*

For money won at dice, &c.

Sucklyn contra *Morley*, the bill being to discover

discover what money the defendant won at dice or play of the plaintiff, overruled, and an injunction, to stay suit upon a bond entered into for the money, 11 *Car.*

To assist a covenant.

Dayrell contra *Pollard*, a bill to assist a covenant, 11 *Car.*

In perpetual memory.

Potts contra *Scarborough*, the bill being to examine witnesses in perpetual memory concerning common retained, 11 *Car.*

Dismissed upon answer.

Walker contra *Lipscombe*, for that the plaintiff showed by his bill, that he hath no witnesses to prove the same, and the defendant denied upon oath, therefore dismissed, *Mich.* 12 *Car. li. B.*

Read contra *Gilbert*, a demurrer put into a bill for fees for soliciting to discharge a tenure done accordingly yet demurred to stand, 12 *Car.*

A bill for a way.

Savill contra *Timperley*, a bill to be relieved for a way which hath been abolished, a commission to set it out in 8 *Jac. fo.* 855.

Rembolt contra *James*, in *Mich.* 15 *Car.*

Upon a promise to assure lands of inheritance dismissed.

Miller contra *Blandist*, to be relieved concerning a promise to assure land of inheritance, but because there was no execution thereof, but only 55 shillings paid in hand, dismissed in 30 *Jac. li. B. fo.* 234.

Towne contra *Traherne*, a bill perferred here to stay a suit, brought upon false imprisonment, in 10 *Jac. lib. A. fo.* 477.

Arundell

Arundell contra *Drew*, a bill entered into to procure a marriage, cancelled. A case between *Cosvenors* and *Comes Suff.* 10 *Jac.*

Ireland contra *Jefferey.*

Delabarr contra *Cox*, the bill to be relieved upon articles of agreement, but (because the bargain at dice) would not decree it, in *Mich.* 14 *Car.*

Price contra *Palmer*, a suit to reverse a decree made against a wife, she consenting to a *feme covert's* answer, shall bind, in *Mich.* 9 *Car.*

To perform a will.

Hire contra *Wardall*, the bill is to have a man's will performed, 9th *July*, 4 *Car.*

Aprice contra *Aprice*, a bill preferred for a personal estate, because he makes an estate, title, or interest to himself, dismissed in *Mich.* 13 *Car.*

Gerrard contra *Deering*, because a prohibition to stay suit in the Court of Requests, prefers a bill, and desires depositions in that Court to be used, *Pasch.* 1 *Car.*

To dissolve a contract of marriage.

Bateman contra *Wells*, a bill to dissolve a contract of marriage, and to have bond delivered up, because the woman denies to have him, *Hil.* 8 *Car.*

How far a man must answer.

Cotton contra *Foster*, the plaintiff prefers his bill to have the defendant answer, whether the contract was to receive more monies for interest than warranted, demurred

murred into, but overruled, and if found that the defendant lent it without consideration, then to take the forfeiture in, 25 *Eliz. fo.* 15.

Walsh contra *Marshall*, a bill upon a recognizance, the defendant pleads the Statute of Usury, and the same is insufficent. Ordered to put in such a plea as he will stand unto, 25 *Eliz. li. B. fo.* 28.

Upon an action of the case after a trial referred again thither, but reserving equity.

Mallery contra *Vintner*, a bill to be relieved upon an action of the case upon an accompt, after a verdict, judgment, and execution at law, referred again to law, because a verdict passed upon the oath of one *Vintner*, who was thought not to have dealt fairly at the trial, and after, the cause referred to this Court for equity, *Hil.* 15 *Car.*

Of the nature of conformity.

Muffet contra *Crackplace*, the defendant and two more, ordered to conform themselves to an agreement of other creditors, 11 *Jac. li. A. fo.* 104.

Many plaintiffs in one bill for several causes, and much disliked. *Bristow* and *Parker*, in 1590.

BONDS.

24. Bonds ancient to be cancelled.

Garford contra *Humble*, ancient bonds put in suit, ordered to be cancelled, about *Mich.* 16 *Jac.* 169.

Monson contra *Bettison*, simile in 5 *Car.*

For tobacco cancelled.

Hubberstie contra *Dumethalls*, bonds entered into for tobacco here cancelled, *Mich.* 11 *Jac.*

Put in suit ordered not to proceed.

Pearcy contra *Bardolfe*, the defendant seeks to put a bond in suit against the plaintiff, having married she that promised not to marry without the consent of friends. Ordered not to proceed in 32 *Eliz. li. A. fo.* 213.

Released by the father taken in the sons' names, good.

Simonds contra *Lomley*, bonds released by the father, which he had taken in the names of his sons being infants, thought good and allowed in *Hil.* 20 *Jac.*

Entered into by menaces, &c. cancelled.

Watts contra *Lock*, 4 *Car.* bonds cancelled which have been entered into *per* menaces, threats, and imprisonments.

Otby contra *Daniel*, point of cozenage, bonds cancelled, and concerning wares, in 5 *Car. li. B.*

For resigning a benefice.

Wood contra *Berry*, concerning bonds given for resigning a benefice, my Lord Keeper's distinction concerning simony, in *Trin. Car.* 6 *li. B. fo.* 653.

Snell contra *Still*, concerning bonds to present to a benefice, *M.* 3 *Car.*

For payment of money and a release made all in one day relieved.

Topp contra *Roberts*, *Mich.* 12 *Car. li. A. fo.* 66, the defendant would avoid the payment of money upon a bond, because the plaintiff made a release the same day after the bond entered into, relieved here.

Wynne contra *Swayn*, and *Man* contra *Ham*, bonds entered into for performance of

of an award, upon non-performance sued, yet stayed by injunction, 6 *Car. li. B.*

Lever contra *Arsents*, 6 *Car. li. B.* bonds entered into for fees, and lord's favours cancelled.

Colston contra *Carr*, a misnomer in a bond no advantage to be taken, 11 *May*, 33 *Eliz.*

Mistaken, no advantage.

Wright contra *Moore*, 7 *Car.* a voluntary bond of £1000 entered into for no consideration, cancelled in the presence of judges.

A voluntary bond entered into cancelled.

Arleston contra *Kent*, bonds entered into for procuring a marriage, cancelled, *February*, 17 *Jac.*

For procuring marriages cancelled.

Gotts contra *Gibson*, *February*, 10 *Jac.* an injunction awarded.

Wiseman contra *Pascell*, the bond brought into Court, 3 *Car.*

Trobridge's case, 9 *Car.* two bonds for first fruits entered into, the first must be delivered up.

For first fruits one delivered up.

Malton contra *Pennell*, 12 *Car.* though a bond be forfeited, and money tendered afterwards, shall be allowed no use after the tender.

Forfeited and after the money tendered, no use from that time allowed.

Dom. Cavendish contra *Forth*, bonds entered into in 22 *Eliz.* because it was not inventoried, and some money proved to be paid to the testator, it was conceived the

Ancient to be delivered up and cancelled.

the money was all paid, and the bonds decreed to be delivered up.

For performance of covenants mistaken, cancelled.

Tisdall contra *Danvers*, a covenant that a meadow was haimeable at *May* day, and a bond for performance of covenants, that the meadow was haimeable at *April*, the bond was put in suit upon that covenant, decreed to be cancelled, in 10 *Jac. li. A. fo.* 231.

Without use by the father, the son shall have none.

Archer contra *Bartlet*, in 10 *Car.* where the bond is made without use by the father, the son shall be concluded.

Voluntary.

Bridges contra *Wimbleton*, concerning a voluntary bond entered into, 10 *Car.*

Entered into to procure a pardon.

Mainwayring contra *James* and *Moie*, concerning bonds entered into, to procure a pardon, the bill and answer expresseth the bonds to be without any consideration, and no personal estate to satisfy, and how far the pardon shall take away the civil action of another, and the Lord Keeper's declaration, if a man enters into a bond for payment of a sum certain, at a day certain, the obligee shall not be put to prove the bond, in *November*, 1629.

BROCAGE.

25. Brocage of citizens and gentlemen.

Sands contra *Greshall*, the great cause concerning young gentlemen being brought in by Londoners, *Hil.* 31 or 32 *Eliz.*

CATTLE

CATTLE TITHEABLE.

26. What manner of cattle titheable.

Southby contra *Meere*, 5 or 6 *Car.* concerning what manner of cattle are titheable.

CHARITABLE USES.

27. Money given to a charitable use decreed with damages.

Seymor contra *Pauperes de Twiford*, money long since given to a charitable use, decreed with interest, *Trin.* 1634.

Woolrich contra *Inhabitant de Frempton*, charitable uses upon the statute of 43 *Eliz.*

Burford contra *Pauperes de Sudbury*, *Trin.* 5 *Car.*

Slater contra *Phillips*, concerning a charitable use, and the judge's certificate upon the statute of 43 *Eliz.* 5 *Car.* and *Mich.* 2 *Car.*

Charitable uses, when confirmed by lord keeper, not to be altered, and the lord keeper's power.

Pauperes de East-Greensted contra *Howard*, my lord declared, that when he had altered or confirmed the decree made upon the statute 43 *Eliz.* the decree is to be perpetual, and then to remain in the petty-bag, and it is in his power to make decree good, which is defective, in 8 *Car.* and 10, how far a purchaser shall be bound.

Hungate ex parte Inhabitant de Sherborne, 3 *Car.* a debt which is a charitable use in action, was given for the erection of a school, and this was a good appointment within this law.

Steward

Steward contra *Jermyn*, 41 *Eliz.* when a donor appoints lands or goods to be sold to maintain a charitable use, and doth not appoint by whom, the sale shall be made by such as the commissioners shall appoint.

Hellams, *Trin.* 5 *Car.* a devise to the company of leather-sellers, *London*, for a charitable use, was holden a good devise.

2 *Jac.* lands in *Gray's-Inn Lane*, given to build a school at *Rugby* in *Com' Warr'*, the commissioners did sit at *Rugby* to inquire, and held not good.

Wingfield, 4 *Car.* money was given for the good of the church of *Dale*, and this was ruled good upon these general words.

Kensham, 41 *Eliz.* that a copyhold may be charged with a charitable use.

Goff contra *Webb*, 44 *Eliz.* upon the will of one *Hunt*, of the lease of the rectory of *Haines* in the county of *Wilts*, it was resolved by *Egerton* and *Popham*, that a devise of money be distributed to twenty of the poorest of his kindred, shall be a good devise, notwithstanding it doth not appear that he had any poor kindred.

Champion contra *Smith*, 3 *Jacobi*, one *Ridley* being seised of copyhold lands in *Barking* in *Essex*, did devise that the parson and churchwardens in *Thames-street*, *London*, and four honest men of that

that parish, should sell the land, and employ the money for the poor and charitable uses in that parish. And it was objected that the devise was void, because the parson and churchwardens were not a corporation to take land out of *London*, nor to sell it for such uses, but it was decreed that the devise was good, and that they had a good authority to sell the same.

Stoddard, 20 *Jacobi*, who devised by parol a yearly rent of ten pounds *per annum* for ever, out of his house called the *Swan with Two Necks*, in the *Old Jewry*, *London*, for the maintenance of two scholars in *Oxford* and *Cambridge*, and willed that *Hugh le Scrivenor* should put it into writing, which he did accordingly; and this was found by inquisition, and decreed.

And it was objected, that the devise was not good, for that a rent could not be devised by a will nuncupative, but the decree was confirmed to be good, for a rent may be created and granted without deed in case of a petition, much more for a charitable use.

Hire contra *Cordall*, *Pasch.* 4 *Jac.* upon the will of one *Thompson*, who being seised of lands in *London*, did devise that it should be sold after the death of his wife, for daughters' portions, and made his wife his

his executrix; and it was ruled, that the executors of his wife might sell, for land in *London* devisable by custom before the Statute of Wills, but it was doubted that it had been of lands not devisable by custom.

Mayor and Burgesses of Reading contra *Lane*, in 43 *Eliz.* a devise to the poor people maintained in the hospital in the parish of Saint *Laurence*, in *Reading*, for ever; exception was taken that the poor were not capable by that name for no corporation, yet because the plaintiff was capable to take lands in mortmain, and did govern the hospital, it was decreed the defendant should assure the lands to the mayor and burgesses for the maintenance of the said hospital.

Sir *Thomas Middleton*, *Hil.* 15 *Jac.* The master and mariners in a voyage to sea, agreed that a rateable proportion should be deducted out of their wages, for relief of such seafaring men as should be maimed at sea, and Sir *Thomas Middleton* (being treasurer for the navy, *anno* 1590,) had paid their wages, and detained this money for the maimed seafaring men, and not paid it, and although no certain particular men could claim it, yet he was adjudged to account for it by this law.

Mayor of Bristol contra *Whitton*, 9 *Car.* a man deviseth by his will, monies to a charitable

charitable use, to be bestowed for poor people, and the residue of his goods to be employed to such uses as his feoffees shall think meet, devise is good, though it be devised to a corporation, &c. in 8 *and* 9 *Car.* Two judges' certificate afterwards.

Fisher contra *Hill*, when no use is mentioned or directed in a deed, it shall be decreed to the use of the poor, and the feoffment being made to gentlemen out of the town, sought to be avoided, because it ought to be the townsmen only, decreed in 10 *Jac. li. B. fo.* 238.

Pie contra in 14 *Car.*

Estcot contra *Cooke and Mannington*, in *Mich.* 15 *Car.*

Allen contra *Cooke*, *Mich.* 14 *Car.*

Peacocke contra *Thewer*, *M.* 14 *Car.* if lands be given to a charitable use, to dispose an overplus, if the purchaser had no notice, cannot bind him, but if rent issue out of land, the purchaser must pay it, but will not charge him to pay arrearages before purchase, nor lay it upon one, nor excuse the other.

Mansell contra *Middleton*, in *Mich.* 14 *Car.*

Penniman contra *Jennings*, lands given to churchwardens, void in law, decreed hereabout, 2 *Car.*

Pember contra *Inhabitant de Kington*, whether

whether money given to maintain a preaching minister be a charitable use, the Lord Keeper and the judges did decree (notwithstanding it is not warranted by the statute to be a charitable use) that the same shall be paid by the executor to such maintenance, in *Trin.* 15 *Car.*

Pensterd contra *Pavier*, A. deviseth twenty pounds *per annum*, to a preaching minister, dies, leaving lands and assets, the defendant will not pay it accordingly, the Court with the judges chargeth her out of the asserts, to buy lands to perpetuate it, in *Trin.* 15 *Car.* she having but a third part of the lands, and so ought not to be chargeable with any more.

Bramble contra *Pauperes de Havering*, *feme covert* makes a will of thirty shillings *per annum* to a charitable use, out of some of her own lands, and (though an award) it shall be paid, and bonds given to perform the same, yet the heir is not bound to perform the same in *Trin.* 15 *Car.*

Windsor contra *Pauperes de Farnham*, whether after appearance upon exceptions, the decree may be revived, in *Pasch.* 2 *Car.*

CHOSE IN ACTION.

28. *Chose in action* good in this Court.

Burrell contra *Siday*, a devise out of a *chose in action*, good in this Court, in 3 *Car. li. B. fo.* 792.

Roch

Roch contra *Guntur*, assignee of *chose in action*, in *Mich.* 15 *Car.*

Greenvile contra *Com' Suff.* concerning assigning of *those in action*, and disposition of things by a *feme covert*, in *li. A. fo.* 5 *Car.*

Assigned, and disposition of things by a *feme covert.*

Georges contra *Chancey*, *Mich.* 15 *Car.*

Greenvile contra *Cutteford*, in *Hill.* 1632.

Seaten contra *Ferrers*, concerning the assigning of money decreed in *li. B.* 22 *Jac.* and a second purchaser ordered to pay the money, although but *chose in action*, and not privy to the assignment.

Assignable by this Court.

COLLUDER.

29.

Forth, to bring in *Mary Dick*, with whom he colluded, the Lord *Audley* and 32 *and* 33 *Eliz.*

One colluder to bring in another.

COMMON.

30.

Magister et Societat' Christ-church, in *Cambridge*, contra *Martin*, the bill concerning title of common, and the Court awards a commission for the distinguishing the metes and bounds, in 32 *Eliz. li. A. fo.* 207.

Common. A commission to distinguish bounds and metes.

Sands contra *Beale*, in *Pasch.* 20 *Jac. fo.* 866.

Tenants

Determined here and stinting of cattle.

Tenants of Dosthorpe contra *Loveday*, point of common determined here, in 33 *Eliz. fo.* 400, *li. B.*

Raremeadow contra *Beacle*, and stinting of cattle, in *Nov.* 7 *Jac.*

French contra *Eyer*, in 33 *Eliz.* concerning commons, wastes, and customs.

Cockaine contra *Dom. Howard*, for apportionment of common, 9 *Car.*

Goodman contra *Wood*, this Court determines the liberty of foldage and pasture, and what number of sheep shall be kept, 21 *Jac.*

Hartley contra *Dively*, a bill here for common of pasture for him and his tenants, and common of turbary in the waste grounds in a manor allowed here, in 33 *Eliz. fo.* 192.

After trial at law a commission to set forth common.

Lamott contra *Hitch*, whether a common for sheep lies now in the parish of *Melborne* or *Folmer*, though sent to law, yet reserving equity, to the end a commission may be awarded to set it out, in 14 *Car.*

To be according to the plough-land, and cottages not to be excepted.

Sewell contra *Finch*, finds that the town hath had always common, and many deeds speak of use and trust, the Court adjudgeth the common to be according to the plough-land, and cottages not to be excepted, but to have a proportionable rate in 2 *Car.*

Tucker

Tucker contra *Coppleston*, because the plaintiff could not prescribe any title of commoning in the wastes, no relief, in *Pasch.* 15 *Car.* Prescription of common, how far relieved.

Mole contra *Mole*, an agreement between townsmen concerning stinting and restraining cattle, and other orders in the fields, dismissed, in 15 *Car.* By laws for stinting of common, dismissed.

COMMISSIONS.

31.

Cage contra *Elrington*, a special commission to private persons to apprehend one in contempt, and to bring him to the Fleet, *Trin.* 3 *Jac.* Commission, special, to private persons.

The parties shall be bailed if good sureties be offered, or else they shall be sued, about 37 *and* 38 *Eliz.* Of rebellion.

Because the defendant had set out all process of contempt, 1 *Ed.* 6, *fo.* 144, or 244. For possession.

Another for *Lawson*, 37 *H.* 8.

Evans contra *Bingham*, 30 *Eliz.*

Lovis contra *Lovis*, *eod.*

Brereton contra *Young*, about 33 *Eliz.* commission to take possession, and apprehend the contemners.

Brocas contra *Savage*, to put the defendant in possession.

Wildgosse contra *Ragland*, 36 *Eliz.* because the defendant stood out all process

of contempt for not answering, the bill was taken *pro confesso*, *Denton Mill.* was plaintiff contra *Brown*, in *Pasch.* 11 *Jac. li. A. fo.* 736.

Another between *Comes Oxon* contra *Gouch*, about 13 *Jac. fo.* 104.

Comes Hertford contra *Gerrard*, because the defendant would not answer the plaintiff's bill, it was taken *pro confesso*, 10 *Jac. li. A. fo.* 371.

Devoreux contra *Stephens*, *May*, 11 *Jac. fo.* 632.

To examine wastes.

Peshall contra *Reresby*, a commission to examine wastes, in 12 *Jac. li. B. fo.* 74.

Sacheverell contra *Sacheverell*, one of the commissioners letting the defendant escape, being taken upon a commission of rebellion, was to stand committed to prison, till he brings in the defendant, in *Hil.* 18 *Jac.*

To prove whether a child be legitimate.

A commission out of this Court, to prove whether a child be legitimate, *Cressey* contra *Hull*, *Pasch.* 11 *and* 12 *Eliz. li. A. fo.* 130. The contrary in 22 *Jac. inter Hobby* and *Smith.*

Townley contra *Clench*, or *Clench* contra *Townley*, about 40 *Eliz.*

To set out lands for payment of debts.

Mullineux contra *Mullineux*, the Court orders that a commission shall go forth to set out lands that lie promiscuously to be liable for payment of debts, in *February* or *January*, 14 *Jac. li. B. fo.* 427.

Peckering

Peckering contra *Kimpton*, a commission to set out copyhold land from free land which lie obscured, if the commissioners cannot sever it, then to set out so much in lieu thereof, in *Mich.* or *Hil.* 5 *Car.*

To set out copyhold land from freehold lands.

Lovelace contra *Coffin*, whether a commission to answer and examine witnesses, may in one be concluded, 9 *Car.*

Hopton contra *Higgins*, a commission awarded to prove customs, but parties interested shall not be examined as witnesses, in 10 *Jac. li. B. fo.* 309.

To prove customs, but parties interested not to be examined.

Bartley contra *Eyre*, where a commission is awarded to commissioners to examine witnesses, and they cannot agree, or where there is an undue carriage, or the commissioners great, or witnesses old, the Court awards an examiner to go down into the country, in 1st *August*, 41 *Eliz.*

After commission an examiner to go down to examine.

Maton contra *Culpepper*, 25th *April*, 15 *Eliz.*

Stampe contra *Clarke*, in *June*, 32 *Eliz.*

COMMISSIONERS.

32. Commissioners.

Nelson contra *Yelverton*, commissioners upon a commission of rebellion, letting the party in contempt go where he listed, ordered to be committed till they pay the debt, in *Trin.* 18 *Jac.*

The

The like between *Sacheverell* and *Sacheverell.*

Morgan contra *Bowdler*, commissioners to be examined upon occasion of partiality and practice, 9 *Car.*

Norton contra *Hodgetts*, *Trin.* 5 *Car.*

COMMITMENT.

33. Commitment, one delivered, and after apprehended and committed. Husband and wife committed.

Brasier and *Crosse*, in 39 *and* 46 *Eliz.*

Wheatley contra *St. John*, the husband and wife committed, in 38 *Eliz. li. A. fo.* 63.

Scroope and *Steward*, the defendant shut up close in the King's Bench, and not to have *habeas corpus.*

Pope contra *Newmon*, *aut aliter*, in *Mich.* 23 *Jac.* committed to Bridewell.

Cutler contra *Barber*, the defendant to stand committed till his wife be examined upon interrogatories, 9 *Jac. li. A. fo.* 787.

Walker contra *Arderne*, it was decreed that if the personal estate of the parties would not pay all debts, that a lease should be sold for the payment thereof, and that the defendant and his wife were committed, because they refused, in 13 *and* 14 *Eliz. li. B. fo.* 70.

One committed for terrifying a witness.

Partridge contra *Partridge*, a man committed for terrifying a witness, which is to be examined at a commission, in *Trin.* 15 *Car.*

CONTRIBUTION.

CONTRIBUTION.

34. Contribution of a bond.

Parkhurst contra *Bathurst*, contribution of a bond, in *Mich.* or *Hil.* 5 *Car.*

Peter contra *Davis*, in *Hil.* 5 *Car.*

Fleetwood contra *Charnock*, sureties compelled to contribute for payment of debt upon a joint bond, in *Pasch.* 5 *Car.*

Wilcox contra *Dom. Dunsmore*, a demurrer put in upon point of contribution, overruled, 12 *Car.*

Hall contra *Offley*, how far the Court will restrain a lord to distrain for rent where he pleaseth, in *Mich.* 3 *Car.* But for the present thinks fit that there should be a contribution.

CONTEMPT.

35. Contempt.

A defendant at contempt and pardoned, the plaintiff was enforced to serve a new *subpœna*, to do that which was first ordered. *Young* contra *Chamberlaine*, *Trin.* 37 *Eliz.*

One witness sufficient to prove a contempt.

Sands contra *Knighton*, one witness sufficient to prove a contempt, in *Mich.* or *Hil.* 13 *Car.*

CONVEYANCE.

36. Conveyance.

The plaintiff (depending the suit) conveys over his interest but in trust, and yet the Court would hold no longer in his name, *Hill* contra *Portman*, 1584.

Rushloy

Lands conveyed away by an idiot holpen for him in remainder.

Rushloy contra *Mansfield*, lands conveyed away by an idiot, by fine holpen for him in remainder, being in fee against a purchaser, and concerning notice also, *Trin.* 10 *Jac. fo.* 119, or 1190, *li. B.*

A restraint from making a conveyance to children by a second *venter*.

Ayloff contra *Ayloff*, rhe Court restrains the defendant from making any conveyance to his children by a second wife, to disinherit the plaintiff being his grandchild and heir, and concerning a promise, in *Trin.* 12 *Jac. li. B. fo.* 1040.

One seeks to avoid a conveyance for want of livery.

Conquest contra *Newdigate*, the defendant seeks to avoid a conveyance for want of livery, yet holpen, and common and farms, whether parcel of the manor, was sought to be avoided by unity of possession, yet decreed here in *Mich.* or *Hil.* 9 *Jac. li. B. fo.* 604.

Finche's case, in *Trin.* 41 *Eliz.*

Conveyance in trust to infants, being after indebted, enabled to sell the lands to pay debts.

Grant contra *Edes*, the plaintiff made a conveyance to feoffees in trust, to the use of his sons being infants, with several remainders over, the plaintiff being after indebted, the Court enables him to convey and sell those lands, in *Hil.* 18 *Jac. li. B. fo.* 758.

Of lands was obtained, the plaintiff being simple reassured.

Lewis contra *Vaughan*, the plaintiff being simple, the defendant got a conveyance from him of his lands, and although the land was sold to purchasers, and a descent, yet the plaintiff had the land re-assured to him, in 4 *Jac. li. B. fo.* 835.

Plasted

Plasted contra *Algood*, whether (a conveyance in trust) a man may dispose of the same by will, or otherwise, in 4 *Car.*

Dom. Buck contra *Paul*, in *Mich.* 5 *Car.* This is concerning an office.

Moreton contra *Briggs*, a conveyance sought to be avoided for want of livery, relieved, *Hil.* 16 *Jac.*

Fitzjames contra *Hirsley*, a widow, before marriage, makes a conveyance to the use of herself to friends, because her husband shall not have benefit; the trustees assign this lease to one for valuable consideration, and though the husband join, shall not prejudice her; but because the assignee came in upon a valuable consideration, shall keep it till he receive all disbursements, and the wife to have benefit of the same, 32 *and* 33 *Eliz. li. A. fo.* 464.

To trustees by the wife before marriage to use, who sells the same, though the husband join, shall not prejudice the wife.

Thomas contra *Powell*, a conveyance in trust to uses, needs no livery, and concerning tenants in common, in *li. B.* 6 *Car.*

In trust to uses, needs no livery.

Episcopus Heref. contra *Bright* and *Barkley*, a conveyance made to avoid a wardship, decreed not to be given in evidence in *Mich.* 6 *Car.*

Dominus Roberts contra *Lea*, the defendant makes a conveyance in trust, and after sells the inheritance, the trust shall go in equity to the purchaser, in 8 *Car.*

In trust, and after sells the inheritance.

Lamplugh's

Lamplugh's case.

Defective, for want of livery, decreed.

Paul contra *Wilkins*, three copartners, one for a valuable consideration sells this land, but before deed executed dies, decreed against the defendant, in *Mich.* 14 *Car.*

Defective, intention supplied.

Cooke contra *Cleere*, though a conveyance be defective, yet because there was a full intention to make better assurance, decreed in 2 *Car.*

CORPUS CUM CAUSA.

37. Corpus cum causa.

Subpena Compl' quia Def't. prosecutus est per Billam Midd'. Ward contra *Marston*, 36 *H.* 8. *fo.* 125.

COPYHOLD.

38. Copyhold.

Severance from the manor hurts not, *Gunn* contra *Buckmaster*, 21 *and* 22 *Eliz. li. A. fo.* 360.

Lands which had gone fifty years, allowed, till recovered by law, *Trin.* 27 *Eliz. fo.* 630, *li. A. Baspoole* contra *Roberts.*

The like 21 *Eliz.* between *Wrayford* and *Carew*, for lands enjoyed sixty years as copyhold, *li. A. fo.* 232.

Lands which had gone but five years as copyhold of inheritance, allowed.

Trin. 26 *Eliz. li. B. fo.* 757, between *Radcliffe* and *Raunce*, (though a manor) some

some copyholds were but for life, and some of inheritance; and in 22 *and* 23 *Eliz.* fifty years' possession allowed, between *Freeman* and *Penny*.

A copyhold granted at a court kept out of the manor, confirmed against the lord which made it, *Marke* contra *Sulyard*, 25 *Eliz.*

The father commits a forfeiture and dieth, the son is admitted as heir by descent, this purgeth not the forfeiture, because the father dying seised of no estate, the son cannot be admitted to any, *Smith* contra , 30 *Eliz.*

An admission by the lord, dispenseth with a former forfeiture, as it was held between *Clerke* and *Wentworth*, about 25 *Eliz.* The father committed a forfeiture, the lord nevertheless seised a heriot upon his death, and yet would avoid the heir's estate for that forfeiture, which he could not, because the taking of a heriot alloweth of a dying seised. *Bacon* contra *Thurley*, *Hil.* 1592.

A suit to compel a lord to grant a licence to let a copyhold, but because the defendant said by this answer that the copyhold was forfeited, this Court would not enforce him to grant a licence, till the forfeiture was examined, *Bullard* contra *Agard*, about 1592.

Justice *Clench fuit D'opinion en case inter Commin*

Commin and Kingsmell and se Copiholder prist marisme sives lycence, &c. ce' imploy sur son Customary allow ei' Dee' releeve in equitie, payant un competent fine, in 1591.

A copyholder can have no assize of common against his lord, but is to be relieved in equity, *The Tenants of Petworth* and *The Earl of Northumberland*, in 38 *and* 39 *Eliz.*

Common for copyholders and terminors is to be relieved here, *Colcot* contra *Lea*, 43 *Eliz.* and 38 *and* 30 *Eliz.*

Rich contra *Erth*, judges of opinion, that a tenant out of the Court cannot take a surrender of a woman covert, for that she is secretly to be examined by the steward, in 38 *Eliz. li. A. fo.* 420.

COSTS.

39. Costs. No costs for a contempt discharged by the general pardon, 27 *Eliz. Fulwood* contra *Fulwood.*

The defendant not being served with process, found the cause set down for hearing, and attended, and was dismissed with costs, because the plaintiff was not ready, *Clayton* contra *Leigh*, 15 *Eliz.*

Brothers contra *Ringrosse*, *Pasch.* 25 *Eliz.*

Brown and North contra *Grove*, in 36 *and* 37 *Eliz.*

A

A matter put to compromise, to be ended by, &c. before the return of the *subpœna*, it was not ended, the defendant got costs for want of a bill, and yet not discharged. *Slater* contra *Finch*, 1596.

Coles contra *Champneys*, the plaintiff is allowed costs, in 7 *Car.* The plaintiff allowed 20*l.* costs

CREDITORS.

40. Creditors ordered to take low rates.

Creditors are ordered to compound with their debtors, for to take a small rate in the hundred. *Mildmay* contra *Wentworth*, *Mich.* 11 *Jac.* committed for suing a surety.

Bret contra *Shurley*, in *Pasch.* 2 *Car.* for good of creditors.

COURT ROLLS.

41. Court rolls, to shew which is copyhold, and which freehold.

Corbet contra *Peshall*, ordered that Court rolls shall be brought and shewed to counsel, to shew which is copyhold, and which is freehold, in 12 *Jac. li. A.*

COVENANT.

42. Covenant to levy a fine.

B. covenants to levy a fine to *F.* of lands given in marriage with his daughter at a day, by negligence of payment, the daughter being dead, *P.* passed away the lands to purchasers, but *B.* ordered to an estate of 100 marks, *Hil.* 15 *Jac. li. A.*

Tunstall

Relieved in equity, after time expired.

Tunstall contra *Lassells*, one covenants and enters into bond for discharging of incumbrances within a time, none stirred within that time, until afterwards, how far shall bind. A case to be made, 2 *Car.*

Ill penned supplied.

Vanlore contra *Bartlet*, a bill to be relieved of a covenant ill penned, demurred unto, but in regard of some precedent agreement, overruled to answer, *Mich.* 3 *Car.*

COUNSELLOR'S CLERK.

43. Counsellor's clerk.

Breame contra *Breame*, the counsellor's clerk not to be examined in the cause, 13 *and* 14 *Eliz. fo.* 93.

Lee contra *Markham*, the counsel of the parties cause, not to be examined in the same cause, 11 *Eliz. li. A. fo.* 17.

Thimblethorpe contra *Thimblethorpe*, the like in *li. B.* 6 *Car.*

CUSTOMS.

44. Customs.

Custom referred to law.

Astill contra *Danvers*, *Novemb.* 30 *Eliz. fo.* 236.

Lort contra *Hutchin*, *May*, 18 *Eliz. li. B. fo.* 1344.

Maning & al' tenen' de, contra *Ep' Worr' sibi & suis*, made an estate of inheritance, and contra *Fines*, 34 *Eliz. li. A. fo.* 826.

Michelborne

Michelborne contra *Fines*, 27th *June*, 33 *Eliz.*

Binxie contra *Smith*, two years and a half value, in *Hil.* 12 *Jac.*

Weedon contra *Stepney*, in 23 *Eliz. li. A. fo.* 327, if any tenant should go about to defraud the lord of the manor, then he to pay a year and a half more.

Tenants de contra *Armstrong*, one year's value and not above, to be paid, in 40 *Eliz. li. B. fo.* 595.

Corbet contra *Tenants de Beannister*, in *Mich.* term, 21 *Jac.* half a year's value.

Stafford contra *Pasch.* in *Mich. and Hil.* 15 *Jac.*

Parker contra *Ten' de Eatmister*, in *Mich.* 21 *Jac.*

Sterling contra *Tenants of Burton*, a composition formerly made between lords and tenants, ought to bind a purchaser or an heir, so decreed in *October*, 40 *Eliz. li. A. fo.* 434.

Pincheon contra *Keeling*, whether fines be arbitrable or not, determined here, and how to ascertain them, in 9 *Car.*

Wingfield contra *Bedford*, in 38 *Eliz.* custom proved of 16 pence an acre for tithe of wood, and no wood in kind, yet the Court would not decree a custom.

Custom certain proved, dismissed.

The opinion of the Court is of advice contrary to the custom of *London*.

Nicholas contra *Dutton*, 32 *Eliz. li. A.*

fo. 677. The plaintiff had two sons and two daughters, if the one daughter died before twenty-one, or marriage, devised by will, the other should have her full part, after the defendant marrying the survivor, was promised to have both portions, and made jointure accordingly, now the sons were preferred in the father's life, the will is void in that point, because by custom they should have a part.

A decree in *Bacon's case* of the like.

Custom in *London*, and promise in *London*, will not hold.

Hall contra *Lumley*, a verbal promise in *London* will not hold, and therefore to answer here to that in 11 *Car.* and in *Nov.* 13 *Car.* decreed to be good here between those parties, and concerning a child preferred in marriage, shall come afterwards into the orphan's court.

Geborne contra *Dutton*, the custom of *London*, whether a child preferred in lifetime of his father, shall after decease go into hotchpot, an order in it, 41 *Eliz. li. A.*

Knivet contra *Freeman*, because the bill is for the manner and custom of tithing, dismissed, in 10 *Jac. li. B. fo.* 322.

Carter contra *Bateman*, *Trin.* 6 *Car.* concerning the custom of *London*, how far a mortgage shall be put into the state.

Greleeves

Greleeves contra *Pope*, the question is, whether the lord of a manor can, by the custom of a manor, grant a reversion for lives, decreed here upon view of the Court rolls, 31st *Fanuary*, 9 *Fac.*

Topp contra *Topp*, deeds of gift made to defraud the plaintiff of her customary estate of *London*, adjudged void, in 40 *Eliz. li. A. fo.* 522.

Page contra *Page*, a decree concerning the custom of the province of *York*, in 13 *Car. li. B. fo.* 51.

Morris contra *Evans*, about 5 *Car.*

Boice contra *Wilkinson*, and concerning other customs, in *Mich.* 10 *Car.*

Carter contra *Maund*, a citizen of *London* deviseth 3000*l.* to his wife, and 3000*l.* to orphans, and legacies to divers others, presuming his estate to be greater than it was, *quere* who shall sustain the loss, either the legatees, or the orphans shall abate, a certificate in *September*, 1626.

Hopton contra *Simcotts*, in *Hil.* 14 *Car.*

DAMAGES.

45. Damage given for waste committed.

Browne contra *Dom' Bridges*, damages given to the plaintiff for wastes committed by the defendant upon the plaintiff's woods, as much as he was damnified, in 31 *Eliz. li. B. fo.* 838.

Blackenden

Blackenden contra *Hidem*, 6 *Jac. li. A. fo.* 915.

The like, *Hastings* contra *Cooper*, in *Pasche* 4 *Jac.* And ordered that no ancient pasture or meadow ground shall be ploughed, 3 *Jac. li. B. fo.* 652.

Damages allowed for children's portions where no allowance by will.

Horton contra *Long*, where there is no provision by a will for maintenance, because the legacies to be paid after the debts, yet the defendant allowed maintenance, and to accompt for the profits of the state as long as it is in his custody, in 2 *Jac. li. B. fo.* 807.

Barwick contra *Barwick*, executors ordered to put in good security to allow five pounds *per centum* for education, and to make good their portions, 44 *Eliz. li. A.*

Farrington contra *Throckmorton*, in *Trin.* 15 *Jac. fo.* 987, *Mich.* following, 99 and 144.

Coriton in *Mich.* 21 *Jac. fo.* 37.

Birch contra *Chambers*, in *May*, 11 *Jac. fo.* 686.

Argentie contra *Young*, in *November*, 37 *Eliz.*

Rolt contra *May*, 1 *Car.* not to put in sureties.

Moulson contra *Moulson*, *Trin.* 16 *Car.*

DEBT.

46.

Cole contra *Ferrand*, the plaintiff was satisfied of a debt upon word by order of Court, before others upon specialty, 3 *Jac. li. B. fo.* 238 *and* 241.

Debt upon word satisfied before others upon specialty.

Skeggs contra *Smith*, whether a debt upon a recognizance may be attached in *London*, or whether an attachment made of a debt in *London* may be pleaded in bar of a *scire facias*, upon a recognizance in this Court, it hath been overruled, in law it cannot, in 38 *Eliz. li. A. fo.* 431.

Upon a recognizance cannot be attached in *London*.

Halsted contra *Little*, debts though beyond the Statute of Limitations, ordered to be paid, because directed to be paid by will, *Hil.* 1632.

To be paid beyond the Statute of Limitation.

Askwith contra *Chamberlaine*, a man makes a debtor executor, there shall be no extinguishment, but it shall go to the estate, *Hil.* 15 *Car.*

A debtor is made executor, shall not drown the debt.

Englefield contra *Nicholas*, Lord Keeper's declaration of the Chancery and Exchequer concerning the mediate debt of a customer, and receiver to the king, and other matters, in *Hil.* 15 *Car.*

Concerning a mediate debt of customers and receivers, &c.

DEEDS.

47.

Saltonstall contra *Wilbore*, the Court would not order the plaintiff to see what covenants, to shew the covenants or contents of his lease

The Court will not order the defendant or deed.

covenants, and ending of a lease or deed, *Mich. Jac. li. B.*

Two voluntary deeds.

Dominus Darcy contra *Allerton*, a second assignment made without consideration being in force, decreed, 31st *June*, 1631.

Defective for want of livery.

Byden contra *Loveden*, the defendant would avoid an estate for want of livery and seisin, but because the plaintiff enjoyed twenty-five years, it was decreed he should enjoy it quietly, 14th *June*, 11 *Jac. li. A.*

Barrow contra *Barrow*, *Mich.* 2 *Car.* upon a deed for want of livery or attachment.

Dom. Darcie contra *Allerton*, two voluntary deeds, the first shall take place, unless the last be for payment of debts, *Hil.* 7 *Car.*

Dominus Rex ordered, that a deed shall be inrolled, though it concerns lands in *Scotland* or *Ireland*, 7 *Car.*

A sleeping deed of intail not favoured.

Pountney contra *Pilkington*, where the father conceives his land to be freehold, gives part thereof to a younger son, although an old sleeping intail be set on foot, shall not prejudice the younger son, 18 *Car.*

Made in trust which took place.

Singer contra *Bennet*, concerning two deeds made in trust, which shall take place, in 8 *Car.*

Row contra *Chessick*, a need for want of livery, in *Mich.* 13 *Car.*

Paul

Paul contra *Michell*, a deed not inrolled, decreed against the heir, but if any other estate challenged by survivorship, or other precedent estate, will not bind, in 14 *Car*. Not inrolled, decreed against the heir only.

Franck contra *Reepe*, how far a defendant shall be compelled to shew a deed of intail, and to be examined upon interrogatories where the same is, *Mich.* 14 *Car*.

Pollard contra *Hall*, in 13 *Car*. and *Morgan* contra *Morgan*.

Vicecomes Rochford contra *Lovell*, the plaintiff's wife had a deed of gift or grant made to her of sheep, and other personal estate, but kept the same still in his own hands, and alters the property and dies, and makes the defendant executor, and the testator's goods which came to his hands far more than the debt, though the goods were altered by the testator, yet the goods which came to the testator's plaintiff's hands shall be liable, in 3 *Car. li. A. fo.* 223.

Barkley contra *Barkley*, my Lord's declaration of a voluntary deed, how far to hold or not, in *Hil.* 15 *Car*.

DECREE.

48. Decree.

In the judgment roll of 36, 37, and 38 *H.* 8, there is a decree to be seen to the

the effect hereafter mentioned, where *Daniel* and the rest of the inhabitants of *Crudworth*, in the county of *Warwick*, exhibited a bill against *Thomas Arderne* for title of common, and to have certain inclosed lands open. It was decreed that *Arderne* and his heirs should hold the same lands so inclosed, discharged of the common, because it seemed that the inhabitants had common enough besides, and that the laying open the lands called *Martinmas Leyse* would be a great decay of husbandry, *Rotul' Judicial' Edw.* 6, 2 *pars*, there is a decree between *Dudley* and his wife, pretending to be executors of one *Morgan*, who supposeth himself to be administrator to that *Morgan*. And because the plaintiff had not sufficiently proved such will, and for that the defendant sued forth his letters of administration, therefore all the goods of the intestate were decreed to the defendant, allowing debts, legacies, and funeral charges.

Rotulo Judicial' 3 pars.

A decree between *Turner* and *Cooke*, plaintiffs, and *Goddard*, defendant, whereby it appears that the controversy was touching the messuages or farm houses, and three hundred acres of land in *Haughton*, in the county of *Southampton*, which the plaintiff supposed to have been demised to *Robert Tanner*, and which the

the defendant claims as executor unto *Thomas Goddard*, and that because the plaintiffs proved not the contents of their bill, and the defendant made proof of his answer, therefore the premises and the lease thereof made to the defendant's testator, were decreed to the defendant against the plaintiff, and that the defendant, after Midsummer then next, should enter and hold the premises (without entry to be made by the plaintiff) till he should recover the same by action at the common law, and furthermore it was ordered that the defendant should be dismissed.

The like decree in the same roll, between , plaintiff, and *Gittins*, defendant, whereby it appears that the plaintiff had purchased certain lands of the king's, whereof he supposed *John Brown*, clerk (to whom the plaintiff was executor) had an abbot's lease, and the defendant pretended that the two messuages and one yard-land was letten unto him by lease, under covenant and seal, for fourscore and one years, and traversed the plaintiff's title, and the plaintiff proved not his bill, and therefore the premises were decreed to the defendant according to his lease, for all the years then to come therein, and the plaintiff adjudged to pay him sixteen shillings and eightpence.

Note,

Note, that it is decreed to him without any *quousq*, that it should be recovered at law, and without any liberty, to shew better matter in this Court.

The like decree in that roll, between *William Messinger* Quer', and the mayor and burgesses of *Gloucester*, touching divers manors. Forasmuch as upon the hearing of the matter, the defendant shewed a tripartite feoffment of the premises, from *John Cooke* to the mayor and burgesses, to the use of a free-school and other purposes, and because the plaintiff proved not the matter of his bill and replication, therefore the said manors and lands, &c. were decreed to the defendants and their successors, to their uses, and that the plaintiff should by Christmas next deliver them all the evidences concerning the same.

The like decree in that roll, between *Thomas Stowell* and *Anthony Capps*, reciting that where the Lord *William Pawlet*, Lord President of the Council, and Lord Keeper of the Great Seal, 22d *Oct. Anno* 5 *Eliz.* 6, because the plaintiff had not proved his title to the manors, &c. decreed the said manors to the defendant and his heirs, till the plaintiff should recover the same at the common law, and that the defendant should also have the arrearages, and twenty shillings costs; the plaintiff being

being grieved with that decree, and exhibiting a new bill to the Lord *Rich*, having at the plaintiff's instance heard the cause, and given divers days to the plaintiff, to shew what he could to reverse that decree, did afterwards, because no just cause was shewed, to frustrate or alter that decree, dismiss the defendant.

Also a like decree in that roll, between *Richard Lewknor*, and dame *Elizabeth* his wife, plaintiffs, and *Robert Barwick*, defendant, because the plaintiffs proved not the matter of their bill and replication, and because the defendant proved a lease to be made to him six years since of the farm of *Elleston*, by one Sir *Roger Lewknor*, therefore the defendant was dismissed. And it was further by the authority aforesaid decreed, that the defendant should enjoy his lease, without interruption of the plaintiffs, or either of them, and the plaintiffs should pay him forty shillings costs.

A decree between *Fotheringall* and *Edsington* defendant, the question was touching certain lands which the plaintiff claimed by lease, and which the defendant claimed as copyhold; and forasmuch as he failed in the proof, and the defendant shewed his copy and ancient court rolls, proving it to be ancient copyhold, therefore the lands were decreed to the defendant according to his copy, against the

Rotulo Judicial, E. 6, 4 *pars.*

the plaintiff his executors and assigns, till the plaintiff should prove a better title before the council at *York*, and yet if the plaintiff did trouble the defendant or his wife at *York*, or any other the king's courts, then he should pay five pounds costs, and the defendant was then dismissed with twenty shillings costs presently.

Another decree in the same roll between *Gervas* and *Gawen*, to the same effect aforesaid.

The like decree in the same roll between *Westwood* and *Westwood*.

Rotulo Judicial, E. 6, 8 *pars.*

A decree between *ap-Edward* and *Trevor*, whereby it appears that the plaintiff, having first a decree by default, did counterfeit an absolute decree, and put the Lord Chancellor's name to it, and therefore it was then ordered that the defendant and his assignees should enjoy the lands, and take the profits thereof against the plaintiff and his heirs, till he or they should prove a better title in this Court.

Brocas contra *Savage*, a decree made for the defendant, notwithstanding it was alleged by the plaintiff in respect the possession of the premises was in question, in 31 *Eliz. li. B. fo.* 295.

He in reversion coming in by surrender, bound by decree.

A decree against the lessee and all claiming under him, he surrenders to him in

in reversion, and he was adjudged to be bound by the decree for so long time as the lease should have endured.

Chapman contra *Bissow*, 23 *and* 24 *Eliz.* the tenant in possession wasted the houses because dispunishable, by reason of a mesne estate for life, yet decreed that he should repair two parts in judgment roll, *Edw.* 6, *Vaneerant* and *Eyre.*

Strelley contra *Throckmorton*, and *Foliamb* and *Fitzwilliams*, two parts of judgment roll, *Edw.* 6, and *Woodley* and *Read.*

Goodman contra *Kinnerley*, *Jennings* contra *Blunt*, *Read* contra *Rawlins*, *Nicholas Scot* in the second part of judgment roll, *H.* 8, and in the same roll, two decrees for divorces. *Terrell* and his wife, *Jeffery* and *Jenny.*

After verdicts in King's Bench.

Moore and *Taylor*, 29 *Eliz.*
Some and *Poyntell*, } 26 *Eliz.*
Hoskins and *Perry*, }

For an heir touching lands conveyed by a recusant.

A decree made for an heir at the common law against certain feoffees who had lands conveyed unto them to maintain scholars, who should use holy orders, *Crofts* and *Evetts*, *Mich.* 3 *Jac.* Another, 4 *Jac.* 4 *Witering* contra *Peshall*, 18 *Jac.*

A decree made to relieve one which had double taken from him (as a concealer) by virtue of the Statute of Bankrupts, upon

indirect dealing by commissioners, in the execution of the commission, *Wood* contra *Hayes*, 4 *Jac.*

Allen contra *Edwards*, 2 *Jac.* *Et Edwards*, *Smith and Wood* contra , in 8 *Jac.*

The Court decrees that the husband and wife shall make, seal, and deliver, or suffer livery of a lease of the lands to be made to the plaintiff by the said husband and his wife. *Hungerford* contra *Hutton*, 12 *Eliz. li. A. fo.* 91.

Dom. Culpepper contra *Parslow*, the Court decrees the thing promised, and the husband is bound by the wife's promise. The question is, whether the wife was married at the time of the promise made or not, *Mich. Jac. li. A. fo.* 138.

Decree and commission.

Frankland contra *Graie*, the plaintiff bought land of the defendant, which the defendant had conveyed before, to the use of himself, his wife and son; it was decreed that the plaintiff should have the land against all, in 13 and 14 *Eliz. li. B. fo.* 81. The defendant refused, a writ of execution went out, and he could not be found, served upon his wife who refused, all process of contempt went out against him in *lib. eod. fo.* 159, 264, 350. Whereupon in respect he could not be found a commission was directed to take possession of the said lands, and the tenants to

to pay their rents to the plaintiff, or else attachments to be awarded against them.

Bull contra *Huddleton*, decree without a bill in *Mich.* 9 *Jac. li. B. fo.* 27, or thereabouts. Without a bill.

West contra *West*, and a sequestration, 12 *Car.*

Harris contra *Smith*, a decree to resign a benefice, in *Mich.* 8. *Car.* To resign a benefice.

Reyner contra *Reyner*, in *Mich.* 22 *Jac.*

Dom. Effingham contra , a decree without proof for quieting of possession. Without proof for quieting of possession.

Denis contra *Carew*, in 16 *Jac.* an injunction or decree here without any proof to quiet possession had at law, and to avoid multiplicity of suits, in 3 *vel* 4 *Jac.*

Durham contra *Dearing*, in 4 *vel* 5 *Jac.*

Sawyer contra *Pomery*, *li. B. fo.* 786, in *libro novo.*

Standen contra *Bullock*, 41 *Eliz. li. B. fo.* 284.

Manwaring contra *Peck*, a decree for establishing of a lease which is supposed to be void, and against a statute law, being prior's land, in 11 *Jac. li. A. fo.* 342. For a lease supposed to be void, &c.

Francis contra *Jarvace*, the Court doth decree and confirm the decree in the Court of Requests, without any proofs of the substance of the matter, notwithstanding Confirmation of a decree in the Court of Requests.

standing the prohibition out of the Court of Common Pleas, or King's Bench, *li. B.* 9 *Jac. fo.* 277.

Parcel or no parcel decreed here.

Decanus Windsor contra *Kinnersley*, the point being parcel or no parcel, decreed, and being uncertain, the lands lying intermixed, ordered to be set out, notwithstanding the defendant by general words in a bargain and sale, have enjoyed the same long, yet ordered in Michaelmas, 9 *Jac. li. A. fo.* 321.

Decanus Windsor contra *Bouliant*, the like in *Mich.* 8 *Jac. li. A. fo.* 390.

Sincton contra *Greene*, upon point of reputation, in *Nov.* 7 *Jac.* Decreed in *Pasch.* 9 *Car.*

Upon one witness.

Eland contra *Wright*, a decree upon one witness appeareth by a judge's certificate, in *Hil.* 9 *Car. vel Jac.* or *Pasche*, following.

Swan contra *Atkins*, a decree upon one witness which proves his pedigree, from whence he claims, in 16 *and* 17 *Eliz. li. A. fo.* 213.

Fawkner contra *Winchcombe*, in *Pasche*, 10 *Jac. vel Car. li. B. fo.* 788.

Upon a verbal promise.

Hunt contra *Cheeseman*, a decree made upon a verbal promise in *Pasche.* 10 *Jac. vel Car. li. B. fo.* 813.

A decree pronounced in the testator's lifetime, not to be passed under seal by the executor. *Ewer* contra *Frere*, *Pasche*, 1634.

Dominus

Dominus Peter contra *Elimozinarius de Westm.* a decree to avoid a decree made according to the statute of 43 *Eliz.* in *Trin.* 3 *Jac. li. B.* To avoid a decree.

This cause was, where the lands came into the king's hand, but not by the statute of Chantries, and the king being so seised *de facto et non jure*, grants these lands to a common person, whether the grant be good, yea or no in equity.

Noxon contra *Browning*, in 3 *Jac. li. B. fo.* 515, and afterwards if there be a decree made in this Court, upon the decree of the commissioners upon the statute; as shall not be maintainable by the said statute, *fo.* 864.

Pauperes de Trinbury contra *Chapman*, in *Mich.* or *Hil.* 4 or 5 *Car.*

Ewderby contra *Huddleston*, examined a decree in the Court of Requests in *October*, 9 *Jac.*

Kitson contra *Cropley*, *May*, 37 *Eliz.* a decree to prohibit a man from sowing of ridges which lie in sheepcourse in *May*, 37 *Eliz.*

Jervace contra *Bullen*, 12 *Jac.*

Villa de Yarmouth contra *Decanum Norwich*, a decree to prohibit a parson from preaching, and the town to pay costs, in *Hil.* 5 *Car.* To prohibit one from preaching.

Holme contra *Wild*, the defendant entered into a bond to leave his fellowship, and

and after takes away his bond, the Court doth displace him, and decreed him to leave it, *Pasche*, 15 *Car.*

For by-laws.

Shipwaie contra *Pilkington*, concerning the decreeing of by-laws for the good of a town, a decree in 5 *Car.* and a decree in 25 *Eliz.*

Dodford contra *Sessions*, the contrary in 14 *Car.*

In the Court of Requests confirmed.

King contra *Burrell*, a decree in the Court of Requests upon a verbal promise, a prohibition thereupon, this Court confirms that decree, because the plaintiff is ancient tenant, and been at costs in building, *Hil.* 2 *Car.*

Reversed though no new matter.

Episcopus Dunelmen' contra *Martin*, a decree reversed though no new matter, in *Trin.* 5 *Car.* the case upon which the decree was mistaken, and notwithstanding his translation, sues as for the right of the Bishop of *Oxon'*.

Comes Devon contra *Leake*, some mistaking in a decree amended, &c. in *Hil.* 14 *Car.*

Irons laid on a man in the Fleet for not performing a decree.

South contra *Gardiner*, irons to be laid upon a man in the Fleet, because he will not perform a decree, in 6 *Car. li. B.*

Barker contra *Shepheard*, about 3 *Car.*

Patent of concealment.

Swan contra *Turbervile*, concerning a patent of concealment, decreed, and other patents, in *Car. li. B.*

Comes

Comes Pembroke contra *Zouch*, a legacy decreed, in *Mich.* 7 *Car.* Legacy decreed.

Monke contra *Winch*, decree against an infant, and one bound in 500*l.* to perform when he comes to age, *Hil.* 2 *Car.* Against an infant.

Portington contra *Beamont*, a decree here, to confirm a decree at *York*, to prevent prohibition, *Trin.* 2 *Car.* To confirm a decree at *York*.

Lashbrooke contra *Tiler*, alimony decreed here, 8 *Car.* Alimony

Gresham contra *Dee*, and *Dee* contra *Woodhouse*, in 4 *Car.* a man may affirm a decree though not in possession.

Mayor of Norwich contra *Decanum Norwich*, decree for precincts and parcels, 8 *Car.*

Wright contra *Middleton*, this Court examines a decree made at *York*, 8 *Car.*

Coventry contra *Mayor of London* and *West.* 6 *Car.* After a decree in *London*.

Paine contra *Pattison*, a decree for damages for a lessee for years, in *Mich.* 7 *Car.* For damages.

Hill contra *Michell*, *Mich.* 9 *Car.*

Richman contra *Gislinham*, look Justice *Crooke's* certificate, 9 *Car.*

Askwith contra *Turner*, the Court will not reverse a decree made at *York*, unless it was unduly obtained, or error therein, 9 *Car.*

Devisteed contra *Englested*, 38 *Eliz. li. B.* A suit retained here after a decree in the Court of Requests.

B. fo. 426. Notwithstanding a decree in the Court of Requests, this Court refers as well matters decreed there, as here, to referees, to cast up account.

For tithes in kind.

Farmour contra *Trost*, tithes in kind decreed, notwithstanding a decree in Lord *Bacon's* time, 12 *Car.* and what is a yardland, and how to set it out.

Episcopus Heref. contra *Awbrey*, *Hil.* 14 *Car.*

Kenrick contra *Temple*, 15 *Car.*

Magister Trin. Coll. contra *Brooke*, 12 *Car.*

Birch trees, timber trees.

Comitissa Cumbries contra *Com. Cumbrie*, birch trees are decreed to be timber trees, in 8 *Jac. fo.* 349.

And sequestration in infants' hands, or to their use.

Sere and Eland contra *Colley*, the plaintiffs being creditors of *Colley*, preferred their bill against the defendant, being all foreigners, but the goods were passed over into *England*, into merchants' hands, by *Colley*, and this Court taking notice in respect of the different computation of the realm, first to be paid at the feast of the three kings' heads; secondly, because the bill was not sealed; thirdly, because the debts grew in *France*, and he came over hither to keep his body from arrests, the Court decreed the debts, and caused a decree to be drawn up *pro confesso*, because the defendant would not answer, and sequestered monies in other men's hands

hands to pay the debts, although they were passed over to others to the use of an infant, 8 *Jac. li. A. fo.* 1184.

Cooke contra *Trewman*, a decree upon a verbal agreement, in *Trin.* 4 *Jac.*

Shires contra *Burgaine*, a decree for tithe conies and wood, 12 *Car.*

For tithe conies and wood.

Holme contra *Fletcher*, concerning a legacy, in *Mich.* 2 *Car.*

Poole contra *Coxwell*, *Trin.* 4 *Car.* the father entered into articles for land, the son no party, yet having consented, decreed.

Redman contra *Torrell*, for that the plaintiff's father did fully intend and resolve that the plaintiff should have the lease, and did give the same accordingly, and that she at divers times declared that she had given him the said lease, and for that *Christopher Torrell* himself protested, as he was a Christian man, did promise that the plaintiff should, and for that the said *Torrell* did purpose to send to the plaintiff for some agreement, and made offer of 200*l.* for the said lease, therefore decreed, in 28 *Eliz. fo.* 682.

An intention with a declaration supplied.

Wotton contra *Wotton*, a highway decreed, in 10 *Car.*

A highway decreed.

Powell contra *Parsons*, a piece of ground sold, but no reservation of a highway, but decreed that a way should be continued as formerly, *Mich.* 3 *Car.*

Roberts

In the Court of Wards, overruled here.

Roberts contra *Harecourts*, a decree in the Court of Wards decreed here, notwithstanding the decree there, *Hil.* 14 *Car.*

Attorat. Dom. Regis contra *Episc. Oxon.* a bill here to unite a parsonage to the bishop's see, about 12 *Car.*

Dom. Scroope contra *Lazenby*, a decree at *York* being for lands, is adjudged to be *coram non judice*, *Pasche*, 2 *Car.*

Against an infant.

Cromwell contra *Carey*, *Mich.* 7 *Car.* a bill of review, because the decree was against an infant, my Lord's declaration; it shall bind an infant as well as at full age.

Plate decreed to be goods.

Turner contra *Williams*, whether plate doth pass by the name of goods, decreed to be goods, in *Mich.* 15 *Car.*

A portion decreed to a child in *ventre sa mere.*

Pope contra *Courtney*, the Court decreeth that allowance shall be given to a daughter that was in *ventre sa mere priminent enseint* at the time of devise, although void in law, decreed in *Mich.* 3 *Jac. li. A. fo.* 306.

49. DEFENDANT.

Defendant.

A defendant examined touching a contempt, and discharged thereof, shall have costs of course, if a commission be not presently taken out to prove it, and if he prove it not, then increase of costs, *Atkinson* contra *Ailoff*, 37 *Eliz.*

Pike

Pike contra *Higgons uxor & al'*, the defendants ordered to assure lands according to a devise, 12 *and* 13 *Eliz. li. A. fo.* 182.

Ordered to assure lands according to a devise.

Gwynn contra *Petty*, to examine the defendant upon interrogatories at the hearing, *Pasche*, 6 *Car.*

Bradshaw contra *Bradshaw*, a defendant ordered to be examined upon oath at the hearing, *Hil.* 8 *Car.*

Lainer contra *Smith*, the defendant delivered out of execution upon security, in 3 *Car.*

Freed of execution upon security.

Pollixfen contra *Short*, the defendant examined upon interrogatories after a hearing, in 5 *Car.*

Examined after hearing.

Drewry contra *Watson*, to examine a defendant after hearing, in 7 *Car.*

Fenton contra *Blomer*, a defendant not compelled to disclose matter of usury, 22 *Eliz. li. A. fo.* 66.

Not compelled to disclose usury.

Symmes contra *Plowden*, this Court directs a trial, the defendant, to avoid the order of this Court, procures an injunction out of the Exchequer, the defendant committed, in *Trin.* 14 *Car.*

Committed for procuring an injunction of the Exchequer.

Wood contra *Wageman*, the Court, upon view of the body, and upon examination of several witnesses, and upon view of the church-book, adjudgeth the defendant to be under the age of twenty-one years, in 28 *Eliz. fo.* 262.

Anjudged to be under twenty-one years.

Pollard

Pollard contra *Evelin*, if a defendant cannot be found, or hath no house, then to give notice to the clerk in court, which is sufficient, in *Hil.* 15 *Car.*

DEMURRERS.

50. Demurrer. A bill laying a promise to assure lands for ten shillings in hand, and 2100*l.* at days, demurred and allowed, because it was but a preparation for action upon the case, *William* and *Nevill*, *Trin.* 38 *Eliz.*

Wright contra *Fitch*, 13 *Jac. li. B. fo.* 42, the matter being concerning serjeants for arrest in *London*, demurred because of their places, yet overruled and paid good costs.

The general pardon pleaded to discharge an outlawry after judgment, and not allowed till the parties be agreed, *Weekes* contra *Newborow*, *Trin.* 1590.

Harris contra *Beadle*, *Hil.* 18 *Jac. li. A. fo.* 823. *Fitton* contra *Proctor*, 36 *Eliz. li. A. fo.* 499.

A demurrer for outlawry must be upon oath shewed under seal, *Hulst* contra *Hulst*, 36 *Eliz. li. A. fo.* 652.

Paschall contra *Points*, 1597.

A demurrer because of a former dismission must be upon oath, *Brooke* contra *Smith*, 36 *and* 37 *Eliz.*

A demurrer by *deponentem* allowed, *Mollineux* contra *Stanhope*, 23 *Eliz.*

Demurrer because the matter was dismissed in the Court of Requests, overruled, in 30 *Eliz. li. B. fo.* 206, and 493. *Haddon* contra *Salter.*

The husband alone cannot demur for his wife, by the opinion of the Court, *Sturling* and *Green*, 36 *Eliz.*

A demurrer, because *ce q' vy* not shewed to be in life, and overruled the demurrer not to be good, *Victor* and *Read*, 37 *Eliz.*

A demurrer, because it concerns the Queen's title proper for the Exchequer, yet overruled, *Mich.* 33 *Eliz. li. A. fo.* 33.

Biller contra *Elliot*, demurrer, because the matter was depending in the Exchequer before the bill overruled, *Jan.* 35 *Eliz.*

Plumpton contra *Headlam*, demurrer because excommunicated, overruled, about 4 *Car.*

Executors.

Two executors are plaintiffs, one is excommunicated, the other shall be severed, and the defendant shall answer him, *Tomes* contra *Vaughan*, *Hil.* 39 *Eliz.*

Hamblin contra *Dom. Sherringham*, the defendant demurred, because she promised to pay money when she was covert baron, overruled, 25 *Eliz. li. B. fo.* 103.

Crocker contra *Hamden*, demurrer, pretending one executor cannot sue another,

overruled, because the matter is mere testamentary, 20 *Eliz. li. A. fo.* 131.

Gotts contra *Hicks*, a demurrer at the defendant's suit overruled, in *Hil.* 16 *Jac. li. A. fo.* 674.

Skies contra *Rawson*, the defendant put in a demurrer to the plaintiff's bill, because the plaintiff was outlawed at the suit of strangers, yet ordered to answer, in *Mich.* 9 *Jac. li. A. fo.* 234.

Audley contra *Harris*, *Hil.* 1633, a defendant lies in the Fleet for breach of a decree, the plaintiff nevertheless prefers a bill to discover an estate, demurred, because a double execution, yet overruled.

Because excommunicated, overruled.

Brookes contra , about 5 *Car.* a demurrer, because excommunicated, overruled.

Dom. Plummer contra , *Hil.* 6 *Car.*

Donn contra *Donn*, in *Mich.* 7 *Car.*

After replication, disallowed.

Leighton contra , a demurrer put in after execution, replication disallowed, in 5 *Car.*

Evans contra *Leasure*, a demurrer upon a replication, although answered, being upon a promise sixteen years, dismissed notwithstanding the answer, and Sir *Richard Moore's* report, but in respect the promise is annexed to a trust retained, 6 *Car.* , notwithstanding the Statute of Limitation.

Comes

Comes Kingston contra *Wakeman*, in *Hil.* 8 *Car.*

St. John contra *Dom. Thornburgh*, a demurrer to a second bill of revivor overruled, *Hil.* 7 *Car.*

Wild contra *Middleton*, a demurrer, because *Moore*, a bankrupt, and the creditors dwell out of *England* in *Galicia*, overruled, in *Trin.* 8 or 9 *Car.* or *June*, 2 *Car.*

Leake contra , a demurrer, because lands lie in *Ireland*, and there to be determined, overruled, in 8 *Car.*

By contra *Forth*, a demurrer, because a dismission in the Court of Requests, if any new matter, overruled here, 26th *June*, 1606.

Artson contra *Wolverston*, a demurrer, because the defendant had execution at law overruled, 10 *Jac. li. B. fo.* 291.

Morris contra *Owen*, a demurrer, because the plaintiff was outlawed, the defendant ordered to answer, 10 *Jac. fo.* 457.

Bland contra *Comitem Cambrie*, a demurrer pleaded, because remedy at law overruled, *Pasche*, 7 *Car.*

Arnold contra *Arnold*, if a man be outlawed, and sues as executor to another. the plea to the same is overruled, 12 *Jac. li. A. fo.* 353.

Ratcliffe contra *Tolston*, common of pasture

pasture in waste grounds lying in the North, a bill here demurred to, but because it concerneth lands, and the lands be tenant right, and some dwell out of the parish, cannot so well maintain their condition by reason of unity of possession, overruled, in 33 *Eliz. fo.* 191.

Salter contra *Bennet*, a demurrer, because a decree in the Exchequer, overruled and decreed here in presence of the Barons of the Exchequer, *Mich.* 14 *Car. fo.* 38.

Osborne contra *Pagett*, because the defendant did not put in his demurrer according to the rule of Court, moved to have it entered, but denied, in 14 *Car.*

Thynn contra *Westrop*, a demurrer, because the plaintiff's wife outlawed and pleads a release, overruled to answer, in 25 *Eliz. li. B. fo.* 134.

DEPOSITIONS.

51.

Deposition no amendment after publication.

Chamberlaine and *Pope*, 39 *and* 40 *Eliz.* after publication, the Court would not amend a deposition mistaken.

Wynn contra , a man after examination supplies his deposition *ad informand' conscientiam*, about 5 *Car.*

Kinnaston contra *com' Bridgewater*, recording copies of depositions to be allowed, in *Hil.* 2 *Car.*

DEVISE.

52. Devise.

Serjeant and *Serjeant*, 8th *Nov.* 39 *Eliz.* a breach of a condition of a devise holpen against the heir.

Of intailed term.

Cornwallis contra *Penruddock*, concerning the devise of an intailed term, *Hil.* 1 *Car.*

Webb contra *Smith*, in 4 *Car.*

Holditch contra *Phillips*, in *Pasche*, or *Trin.* 4 *Car.*

Palmer contra *Turnor*, 41 *Eliz. fo.* 540.

Of ten pounds *per annum* out of a lease without clause of distress.

Watts contra *Kancie*, a man possessed of a lease for fourscore years devised out thereof ten pounds *per annum* without clause of distress, and made his wife his executrix, and she thereby had the said lease, and afterwards the executrix and husband, and assigns in trust, sold away the same lease, discharged of all incumbrances, the executrix shall be charged, and not the land, 31st *Jan.* 9 *Jac.*

Tennant contra *Braie*, 8th *Nov.* 6 *Jac.* *Carewe's* Report, a devise made to the daughter to pay her a sum of money if she will be divorced from her husband, the gift made good, though the condition void.

Kirrington contra *Astie*, the grandfather deviseth lands to his son to pay ten pounds *per annum* to the son's three

 daughters,

daughters, the father gives two hundred pounds in marriage with one, whether the ten pounds *per annum* shall be included in the two hundred pounds or not, decreed it shall be included, in *Mich.* 13 *Car.*

Phillipps contra *Springett*, notwithstanding a release of a portion relieved, in 10 *Car.*

Grimston contra *Willington*, 2 *Car.*

Higate contra *Higate*, a mortgagor of a copyhold, and a surrender to that purpose, and after deviseth this land to a second son, but no surrender, in *Mich.* 14 *Car.*

Poford contra *Pavier*, *Pasche*, 15 *Car.* the Court will see the will in the same case, but difference is upon some matter of fact.

Parafamilia.

Davenport contra *Dom. Robinson*, the husband by will gives goods, which the defendant pretends belongs to her as *parafamilia*, the devise good, in 5 *Car.*

Crowther contra *Lucie*, the plaintiff being heir to lands in tail, and likewise devised unto him by his mother's father, the lands being in mortgage, and redeemed by a stranger, having sold it again with the consent of his father and mother, could not be relieved here, in 39 *and* 40 *Eliz. li. B. fo.* 435.

Tenants in common by devise.

Mather contra *Godbold*, two joint purchasers, one deviseth his part for payment

ment of debts, ordered in Chancery, *Mich.* 7 *Car.*

Lowen contra *Lowen*, 41 *Eliz. li. A. fo.* 230 and 683, lands devised to two, to be equally divided betwixt them, and to their heirs, are tenants in common, and not joint-tenants, and so decreed, that the survivors shall receive no profit by survivorship.

Bacon contra *Bull*, a devise void in law by reason of a misrecital of a grant, and by reason of an attornment, yet holpen in equity, 38 *Eliz. li. A. fo.* 698.

DIRECTIONS.

53. Directions how to libel in the spiritual Court.

Williams contra *Fawcet*, directions by this Court, how the defendant or his tenant shall libel in the spiritual Court, 13 *Jac. fo.* 292.

DISMISSIONS.

54. Dismissions.

Hawyard contra *Timber*, 4 *Jac. li. B. fo.* 602, the matter heard there after a dismission in the Exchequer upon hearing, but there appearing no matter to relieve the plaintiff, the matter was dismissed, the rather, because there was a former dismission in the Exchequer.

Roe

Roe as heir, exhibited a bill against *Wasorer*, to prove a condition, perpetuity, and conditions broken and dismissed, in 1594.

Because under value.

Reynolds contra *Davy*, 12 *and* 13 *Eliz. li. A. fo.* 87, because the matter in question is under the value of forty shillings *per annum*, therefore the Court dismissed it.

Because defendant and lands in the county palatine.

Botely contra *Savile*, in 13 *and* 14 *Eliz. li. B. fo.* 95 *and* 104, because the defendant and the lands in question lie within the county palatine, the matter was dismissed.

Brereton contra *Jarmin*, 23 *Eliz. li. A. fo.* 428.

Because the lands in question lie within the limits of the commons of the North, the cause was dismissed, *primo et secundo, Edw.* 6, *li. A. fo.* 72.

East contra *Fish*, 12 *Eliz. fol.* 100, because the lands in question is parcel of the Queen's, therefore the matter was dismissed into the Exchequer.

Jay contra *Simcox*, dismissed to law, but shall not plead the statute, 12 *Car.*

DISINHERISON.

55. Disinherison.

Harrington contra *Markham*, the Court was assisted with bishops and noblemen, at the

the hearing of a cause in Chancery, in *July*, 5 or 8 *Jac.* upon point of disinherison.

Woodley contra *Woodley*, a disinherison, and a decree for confirmation, yet after twenty years the decree reversed, and disinherison avoided, in 8 *Car.*

DISTRINGAS.

56. Distringas.

Parker contra *Bowlesse*, a *distringas* awarded where cannot have benefit of extent, 7 *Car.*

DISTRESS.

57. Distress.

Possession and rents ordered to *Molineux* contra *Molineux*, *Hil.* 1590, the tenants would not pay the rents, therefore a distress ordered.

DIVORCE.

58. Divorce.

A divorce *causa frigitatis*, the woman sued for her marriage portion, yet her father was alive who gave it, to which exception was taken, yet the Master of the Rolls said, he would be no formalist. *Barrow* contra *Butten*, in 1594, and 37 *Eliz. fo.* 195.

DOWER.

59. Dower. *Wild* contra *Wells*, bill to be relieved for dower, and a commission to set out the lands, in 25 *Eliz. li. B. fo.* 112.

DUCHY.

60. Duchy. *Hulse* contra *Daniel, Mich.* 5 *and* 6 *Car.* Duchy Court where lands are granted of the crown in fee-farm, reserving rent, are pleadable and determinable in this Court.

Levingston contra *Wife* and *al'*. about 8 *Car.*

Tenants of Barwick contra *Cæsar*, 8 *Car.*

Hampden contra *Ferrers*, in 14 *Car.*

Demurrer by a clerk in the Duchy Court, overruled, 30th *May*, 1606. *Fordan* contra *Pawson.*

ELEGIT.

61. Elegit. *Palmer* contra *Bolls*, an *elegit* returned and filed, being out, and thereby without remedy, renewed by this Court, to be executed, 2 *Car.*

ENTAIL.

62. Entail. *Baile* contra *Read*, 38 *Eliz. li. A. fo.* 728, an entail cut off contrary to a proviso,

viso, to the intent only to make a jointure, and then the remainders were settled in tail as before, wherefore the forfeiture dispensed with in Equity.

Of a chattel, how far good.

Tatton contra *Molineux*, a lease made to feoffees in trust, to the use of the plaintiff for life, and after, to the heirs males of his body, the said plaintiff hath full power to dispose of his lease, so long as he hath an heir, and that an entail of a trust of, or out of, a chattel is not good, nor any such perpetuity, precedents being produced to that purpose, and the Judge's opinion between a remainder of a chattel, and the issue in tail of a chattel, in 7 *Jac. li. A. fo.* 1183, the lands lie in the county palatine.

EQUITY.

63. Equity.

Lock contra *Hunt*, 7 *Car.* no advantage by unity, descent, fine, or discontinuance.

ESTATES.

64. Estate.

King contra *Blundavile*, the defendant having an estate for life without impeachment of waste, was ordered not to do waste both upon woods and houses, 5 *Jac. li. A. fo.* 327.

Piggott contra *Piggott*, in 8 *Jac. li. A. fo.* 766.

Banister

Banister contra *Banister*, an occupant's estate maintained, in *Pasch.* 12 *Jac. li. B.*

Marchio Winton contra *Bushon*, an estate reserved without impeachment of waste, this coming to a lessee, he would have it in the like manner, but restrained here, *Jan.* 11 *Jac.*

Prince contra *Greene*, although an estate cannot be created, by covenant by law, yet made good in Chancery, in *June*, 40 *Eliz.*

Reynell contra *Peacocke*, concerning an estate in fee, depending upon an estate tail, his Lordship would not alter the estates, in *li. B.* 6 *Car.*

Merrifield contra *Merrifield*, about 1634.

Rousewell contra *Knight*, in 10 *Car.* raising of an estate by an agreement.

Barrow contra *Smith*, in 10 *Car.* a man makes a grant to friends of an estate, to the use of three daughters and their heirs, this is joint-tenancy, and the survivor carries it.

Lister contra *Yelverton*, an estate is made to friends in trust to the use of the woman, to commence after her husband's death, she joins in a fine with her husband of the lands leased in trust, this fine shall cut off the trust, and there being an extent upon the lands leased, this trust shall not prevent the extent by reason of the fine, *Trin.* 15 *Car.*

EXCHANGE.

EXCHANGE.

65. Exchange.

Cottington contra *Leversage*, an indenture of exchange decreed, 13 *Jac. li. A. fo.* 229.

EXAMINATION.

66. Examination.

Examinations of plaintiffs and defendants, and witnesses after a hearing.

Throckmorton contra *Cromwell*, 10 *Jac. li. A. fo.* 18.

Touck contra *Thomas*, 19 *Jac. li. A. fo.* 829.

Lea contra *Band*, 1591, and 32 *Eliz.* the defendant was examined upon interrogatories, and yet the plaintiff was left to his proof.

And in *Mich.* 36 *and* 37 *Eliz. li. A. fo.* 422, *Dom. Burleigh* contra *Shute.*

The Court would not examine the defendant unless he would absent, 38 *Eliz. Bowser* contra *Savage.*

A defendant upon a hearing where the plaintiff's proof served not, appointed to be examined. *Bellamy* contra *Radcliff*, 38 *and* 39 *Eliz.*

Waterman contra *Pope*, *Pasch.* 37 *Eliz.*

York contra *Haidon*, the plaintiff was ordered to be examined, or process to be had against him; 11 *and* 12 *Eliz. li. A. fo.* 71.

Lady *Amcotts*, being a defendant, was to be examined upon interrogatories, 11 *and* 12 *Eliz. fo.* 328, *Mayor of Feversham* contra *Ance.*

Cotton contra *Paget*, the defendant not to be examined upon all interrogatories, *eodem, fo.* 367.

Preston contra *Powell*, the wife to be examined as a witness, 41 *Eliz. li. B. fo.* 10.

Glaster's case, concerning an examination, about 6 *Car.*

EXCEPTIONS.

If a man except against an answer and hath it referred, if thereupon it fall out to be good, the defendant shall have costs for that trouble upon motion, *Beswick* contra *Fox*, *Hil.* 39 *Eliz.*

EXECUTORS.

67. Executor not enforced to put in bond but in certain cases.

Executors not in equity compelled to put in bond to perform the will or answer legacies, unless it appear they have either broken the trust in them reposed by the testator, or be decayed since his death, for at his death it seemed he trusted them without bond, *Browne* contra *Purton*, 32 *Eliz. li. B. fo.* 641.

One executor may sue another in this Court

Court, though not at law, *Allen* contra *Story*, in 1585, and *Okely* and *Barnard*, 39 *Eliz.*

Two executors, one of them is made defendant, he shall be charged no further than for the goods came to his own hands, *Herbage* contra *Backskaw*, 35 *Eliz.*

To pay costs.

Englefield contra *Inhabitant de Rotherstrop*, executors, to pay costs adjudged against the testator, because he had assets, 28th *Nov.* 1631.

Sues the executor of his executor.

Brereton contra *Roberts*, the surviving executors, sues the executor of his executor, and likewise where there is a great state come to the executor, which was not disposed of by the testator, the executor shall not have it, but shall be disposed of to the testator's kinsfolk, and to charitable uses; an executor of an executor ordered to account upon oath, and to be examined upon interrogatories to discover the estate, in 6 *Jac. li. A. fo.* 638.

Two executors, one dissents, the act of the other good.

Bacon contra *Bell*, two executors, the one dissents, yet the act of the other shall be good, in *Feb.* 39 *Eliz.*

Holland contra *Owen*, an executor shall not be charged with a trespass committed by the testator, in 3 or 4 *Car.*

Warmstrey contra *Dom' Tanfield*, a *subpœna* against an executor to shew cause why he should not be bound by decree made against the testator, in *Hil.* 5 *Car.* and concludes accordingly.

How

How far a judge's or an officer's executor shall be bound for a neglect done in his office, in *Mich.* or *Hil.* 8 *Car.* or *Jac.*

Co-executors.

Moore contra , in *Mich.* 8 *Car.* two executors and joint in the bill, shall be severed upon hearing.

John contra *Kingston*, co-executors shall not be charged for more than comes to his hands, in 8 *Car.*

Downes, *Jux*, and *Wiseman*, concerning an agreement, and if one executor do waste, the other shall not be charged, *Trin.* or *Mich.* 7 *Car.*

Townley contra *Shurborne*, two trustees of a lease or two executors, one wasteth the goods, the other shall not be charged, unless he was a co-actor, in *Trin.* 9 *Car.*

Deane contra *Ward*, two executors, two answers for mean profits before partition, in 11 *Car.*

Allen contra *Burton*, an executor sues the executor of his co-executor towards payment out of an estate which came to the defendant, who is not chargeable in law with the legacies, but the plaintiff is (as surviving executor) decreed to be liable, in 10 *Jac. li. B. fo.* 243.

Hankinson contra *Pell*, an executor, called in question after question demurred, yet overruled, in 12 *Car.*

Capell contra *Gostow*, two executors, the

the one trusteth the other to receive all rents and dies, the plaintiff calls his executor to an account being the executor of a trustee, ordered to make satisfaction, in 12 *Jac. li. A. fo.* 421.

Terrey contra *Fowler*, an executor maketh doubt whether he shall pay debts before a decree in Chancery, decreed they shall be protected.

Dominus Craven and *Comes Dorset*, creditors, about 6 *Car.*

Wolverston contra *Amherst*, 13 *Car.*

Kemp contra *Lamplugh*, 14 *Car.*

Rowe contra *Billing*, two executors being decreed to pay legacies and debts, the one paying it, the other shall upon a bill be compelled to pay the moiety and costs, in 10 *Car.*

Martin contra *Knowles*, concerning two co-partners executors, the estate being not divided before death, 28 *Eliz. fo.* 257.

Houghton contra *Hampden, et è contra*, one executor receives money for interest, it shall be accounted as principal for five *per centum*, in *Mich.* 9 *Car.*

Vicecomes Conway contra *Crooke*, a bill preferred against the executor of one that committed wastes, demurred unto, and good in 15 *Car.*

But an account for an estate which came to the defendant's hands called in question,

question, pleaded the Statute of Limita tion, overruled, in 15 *Car.*

EXEMPLIFICATION.

69. Exemplification.

Fisher contra *Hawkes and Smith*, in 1590, the plaintiff allowed without shewing a deed enrolled, to plead the exemplification of it.

If a demise of lands want sufficient words to carry that which was meant to pass, it shall not be holpen in equity, *Kent* contra *Kent*, in 1591.

Fisher contra *Smith*, the Court orders an exemplification of a deed to be pleaded at law, where the deed cannot be brought, in 33 *Eliz. li. A. fo.* 26.

EXTENT.

70. Extent not well laid, anew awarded.

Trion contra *Michell*, the plaintiff sued out an elegit, being not well laid, and the extent not good, sues here in equity for the money, decreed 12 *Car.*

To account for profits upon extent according to true valuation, and not to the extended value, but not use for those profits, in 5 *Car. li. B.*

Haughton contra 4 *Car.* or thereabouts.

Aldred contra *Wilkinson*, 5 *Car.*

Dom·

Dom. Deancourt contra *Hampson*, according to the receipt, and not to the extended rate, in 2 *Car.* Lands extended at low rate to answer true value.

Chivers contra *Bampton*, *Trin.* 5 *Car.* a re-extent awarded upon a statute, the lands being not known upon the former extent. Re-extent.

EVIDENCE.

71. Evidence.

Bourn contra *Debest*, shop-books read as an evidence at the hearing, *Mich.* 15 *Car.*

Harrison contra *Bludder*, the same term, and concerning the Statute of Limitation by great advice.

FEME COVERT.

72.

Bacon alias *Prior*, *le feme vend le use q; le feme ad cer' les Deniers uncorpus le mort le Baron quel clayme le use mere, & nient remedie in equitie, 7 E. 4, vouch un case de Tasborough & Danvers*, are in question, *Hil.* 1590.

The husband sold lands and debts due to the wife before coverture, and took wares for it, he dying she surviving released the debts, and decreed she should not, 36 *H.* 6, 134 and 142.

Waterhouse, defendant, was grantee of a lease in trust, to the use of the wife of *Witham;* she died, and made *Waterhouse* administrator;

administrator; *Witham* complained, and would have had the lease in equity, the order and opinion of the Court was, he should not, but the grantee and administrator should, 38 *Eliz.*

Seeks to avoid a lease.

Ireland contra *Pavie*, in *Mich.* 13 *Car.* the plaintiff held two tenements of the husband and wife, and surrendered both in consideration that the husband and wife should make a lease for one of them for three lives; the husband died, the wife being but tenant for life, and so by the statute would have avoided the lease for three lives, but the Court thought good it should be holpen in equity. *Donnery* and *Weston*, 36 *and* 37 *Eliz.*

Feme ad estate dispunishable del wast unc'. wast en measons prohibit & puis en mare sine auxi. *Morgan* and *Peury*, 37 *Eliz.*

Not bound by decree.

Feme covert party by articles, and to a decree, but she assented not, the effect of it was, to forego the jointure for other recompence, after that the husband died, she took a new husband, and they left to the law to recover her jointure. *Slater* contra *Foliambe*, 37 *Eliz.*

Stayward contra *Farmy*, and *Farmy* contra *Stayward*. *Farmy* was enforced to make assurance, *Mich.* or thereabouts, decreed in 39 *and* 40 *Eliz. li. A. fo.* 660: *li. B. fo.* 41, and 42 *Eliz. fo.* 220 and 551, and

and because she refused to perform, saw committed till she did agree.

The like between *Twyn* and *Box*, in *li. A. fo.* 487, 22 *and* 23 *Eliz.*

Egerton contra *Townsend, li. B. fo.* 954. 11 *Jac.*

Voux & Uxor contra *Gleas & Uxor*, 4 *and* 5 *Edw.* 6, *fo.* 35, the Court doth order that the husband shall become bound in a recognizance, that his wife shall release her right.

Compelled to levy a fine.

Barty contra *Herenden*, 2 *and* 3 *Eliz. li. A. fo.* 62, the Court compels the husband and wife to levy a fine.

Wiat contra *Wiat*, in *Mich.* 16 *Jac. li. B. fo.* 476, the wife being no party to the bill.

Hausly contra *Hausly*, *Trin.* 17 *Jac.* and *Hil. prox.*

Committed to Newgate for not performing an order.

Westdeane contra *Frizell & Uxor*, the defendant and his wife committed to prison for not performing the order, in *May*, 10 *Jac.* The decree and their commitments, in 12, 13, *and* 14 *Jac. Regis*, in 14 *Jac. li. B. fo.* 14. She was committed to Newgate.

Compelled to levy a fine and perfect assurances.

Sands contra *Tomlinson*, *Mich. Jac. li. A. fo.* 679, a wife compelled to levy a fine and perfect assurances.

Pope contra *Moore*, the defendant's wife being *priviment enseint* at her husband's death, the child could not be provided for by

by law, but the Court ordered that the child should have sufficient allowance, *li. A. fo.* 307, 3 *Car. vel Jac.*

Sueth her husband and others.

Rivet contra *Lancaster*, the wife sueth her husband, in 39 *Eliz. li. A. fo.* 201.

West contra *West*, 12 *Car.*

And *feme covert* sueth others, 17 *Jac. li. A. fo.* 940.

Kiffin contra *Kiffin*, 17 *Jac. li. A.*

Dom. Crispe in *Pasche* or *Trin.* 18 *Jac. li. A. fo.* 1088.

Comitissa Dorset contra *Comitem Dorset*, about 7 *Jac.*

Fleshward contra *Jackson*, money given to a *feme covert* for her maintenance, because her husband is an unthrift, the husband pretends the money to be his, but the Court ordered that the money should be at her disposing, 21 *Jac. li. B. fo.* 719.

Rust contra *Whittle & al'*, *Pasch.* 8 *Jac. li. B.* The Court doth decree a report wherein it was thought fit that the defendant should compel his wife, and another man's wife, being the other defendant, to levy a fine and join in assurance.

Sued others without her husband, and in her friend's name.

Dom. St. John contra *Englefield*, in *Mich.* 14 *Jac.* a bill preferred without the privity of her husband, allowed.

Gascoigne contra *Francklyne*, a *feme covert* sues others, 42 *Eliz. li. A.* about *fo.* 593.

Haynes

Haynes contra *Duncombe*, in *Trin.* 21 *Jac.*

Milward contra *Bradborne*, 5 or 6 *Car.*

Lake contra *Deane*, 38 *Eliz. li. A. fo.* 157, a wife examined to discover her husband's deceit. Examined against her husband.

Carey contra *Ley*, in *Mich.* 12 *Jac.*

Land charged with a parol trust, though made by a *feme cover.t* Chargeth lands with a parol trust.

Sambroke contra *Ramsey*, in *Mich.* 13 *Car.*

Baskervile contra *Sinthome*, the plaintiff conveyed a lease to feoffees in trust, to the use of his daughters, and to his children lineally; the daughter married and had issue, which dies; marries again, the feoffees convey the lease to the wife and husband, and discharge the trust; the woman gives this trust to the husband, and dies; the heir sues the husband for this land, but ordered that the land should go to the husband, notwithstanding the conveyance, 12 *Jac. li. B.* May dispose of a trust, &c.

Palmer contra *Shonck*, a *feme covert* to answer, *Mich.* 5 *Car.* To answer.

Stiles contra *Stiles*, an agreement binds a *feme* and an infant, in *Hil.* 2 *Car.* An infant bound by agreement.

Sankey contra *Golding*, 21 *Eliz. li.* , *fo.* , a *feme covert* sues without her husband.

Farewell contra *Curson*, *feme covert* sues in Chancery *sa Baron in vie ouster la mare*, 31 *and* 32 *Eliz. fo.* 8. Sues.

Baker

Baker contra *Newbery*, about 5 *Car.* though the husband released.

An infant compelled to answer.

Moore contra *Dom'. Greenvile*, will not answer, because a *feme covert* and within age, compelled, 11 *Car.*

Throckmorton contra *Calver*, a woman returning her answer, being married after the commission awarded, ordered, 11 *Car.*

Bound by agreement.

Randall contra *Tynny*, a single woman did agree to have a moiety of land, and after marriage, subscribed her name with her husband, to a latter agreement, though *feme covert*, decreed, in 10 *Jac. li. B.* 25, or 250.

Holman contra *Awdley*, 10 *Jac. li. B. fo.* 309, a wife not to be examined against her husband.

Demurs, ordered to answer.

Court contra *Popham*, the wife demurs without her husband, because charged with conspiracy aud combination, ordered to answer upon oath, about *June*, 6 *Car.*

Comes Danby contra *Peele*, a release by the husband shall not prejudice the wife, to sue for her jewels, in 13 *Car.* and a wife sues another in a friend's name.

Keeling contra *Bodley*, *Mich.* 14 *Car.*

Rowe contra *Comitem Newburgh*, 14 *Car.* look in it otherwise, because separate.

Comes Exon' contra *Dom. Morley*, how far it binds an heir more than common law, for payment of debts, 13 *Car.*

Portman

Portman contra *Popham*, a wife to answer without her husband being beyond the sea, in 11 *Car.* To answer.

Batson contra *Conney*, the defendant demurs that at the time of the agreement the defendant was an infant at sixteen years old, and now married, and so not bound, ordered to answer, in *Mich.* 14 *Car.* and in *Hil.* 15 or 16 *Car.*

Poole contra *Harrington*, or *è con'*, a wife hath a stock for her own use and dies, who is buried by a friend without direction of her husband, he that buries her must be at the charge, and not the husband, in *Mich.* 14 *Car.*

Roe contra *Dom. Newburah*, a *feme covert* cannot sue, unless there be a severance, this suit is for a promise in marriage, after twenty years, the matter was dismissed, because the plaintiff could not find precedents suiting this case, in *Trin.* 15 *Car.*

Georges contra *Chancie*, a *feme covert* being separated, having an allowance of two hundred pounds, she improved it, and disposed of it by her will, *Mich.* 15 *Car.*

Clarke contra *West*, how far a man *non compos mentis* shall be concluded by a *feme covert's* disposing of his estate, in *Mich.* 15 *Car.* a case made and referred to judges.

Simpson contra *Simpson*, a man cannot sue his wife, nor a wife her husband, in 3 *Car. fo.* 394.

Received 1000*l.* for her right yet not barred.

Dockwray contra *Poole*, a man having three daughters, intails his land upon them; after one of them married, and being a *feme covert*, with the consent of her husband, was contented and agreed to take one thousand pounds, in consideration and extinguishment of her right as co-heir; the judges hold it to be no good bar to her, in *Trin.* 7 *Jac.* the Judge's certificate.

FEME SOLE.

73. *Feme sole*, before marriage, conveys away her estate to, &c. avoided.

Povy contra *Peart*, the plaintiff's wife, before marriage, conveyed away her estate to the defendant being her son, and after the defendant conveyed the same to his children being infants, because (as the Court conceived) it was passed without any consideration, it was decreed for the plaintiff against the defendant, and the infants, in 32 *and* 33 *Eliz. li. B. fo.* 430, 454, and 484.

Reserves power when *feme* revokes that not good.

Atwood contra *Stubbs*, one *Amy Fyms* did cause one *Lightfoot* and the defendant to enter into covenants, and a bond for performance to leave one hundred pounds to pay to such persons as she should appoint, and if she did nominate none, then the same hundred pounds was to be paid to two grandchildren, after she caused the said *Stubbs* and *Lightfoot* to cancel these covenants and bond, to make void this her

her intention, yet decreed to be made good to the plaintiff, in 10 *Jac.* or *Car. li. B. fo.* 442.

Thomas contra *Thomas*, sues to set forth her dower, 13 *and* 14 *Eliz.*

Sues to set forth her dower.

Winter contra *Dancie*, *feme sole* only, takes a commission to examine witnesses, marries before witnesses be examined, and after examined, whether the dispositions should stand, ordered to stand, 10 *Car.*

Take as commission, &c.

Webb contra *Wise*, a marriage before an injunction, the Court declares that it shall go and be revived, notwithstanding no bill of revivor, 10 *Car.*

Marries before an injunction, &c.

Kempe contra *Dom' Reresby*, or *è con'*. the Lord Keeper declares, that a woman cannot have dower of a trust, in *Mich.* 2 *Car.* but compelleth the defendant to answer, who is tenant to the land, to enable her to bring her writ of dower.

A farm with the lands usually set therewith to be let, and the scrivenor put in the farm with the appurtenance, and then got a lease himself to avoid it. *Harbin* and *Straw.*

FINES.

74.

Fines.

A fine and recovery got by circumvention, the party which got it may be compelled in equity to recompence the party circumvented, as the Master of the Rolls

Rolls was of opinion, at the hearing of the cause between *Welby* and *Welby*, *primo May*, 1595.

Fines arbitrable for Copyholders.
Tenant Right.

Middleton contra *Jackson*, in *Hil.* 5 *Car.* one year's moderate value.

Popham contra *Larcesse*, *Trin.* 13 *Car.*

Monsier contra *Ducket*, *Mich.* 14 *Car.* these after a decree at *York*.

Cooper alias *Staynning* contra *Blunt*, a fine arbitrable rated under value, 29 *Eliz. li. B.* or *li. A. fo.* 515.

Stoner contra *Smith*, a fine arbitrable rated at two years and a half rent, which was the higher, in respect of the multiplicity of plaintiffs, 31 *Eliz. li. A. fo.* 484.

Tenants de Accledon contra *Kinnesley*, 21 *and* 22 *Eliz. li. B. fo.* 86.

Gittings contra *Browe*, 41 *Eliz. li. B. fo.* 486, two years' reasonable value.

Lake contra *Fetherell*, *Nov.* 9 *Jac.* two years' value.

Atwood contra *Apsley*, 41 *Eliz.*

Tenants de Gaddesden contra *Carey*, a year's value, and book upon change of tenant, and half a year's value upon change of lord, 4 *Jac. li. B. fo.* 435.

Fox contra *Huddleston*, 4 *Jac. li. B. fo.* 204, a year's value.

Tenant's Right.

Watson

Watson contra *Maihne*, *Mich.* 15 *Jac. li. B. fo.* 328, one year's value.

Nevill contra *Albany*, 12 *Jac. li. B. fo.* 768.

Beare contra *Seymor*, *Mich.* 9 *Jac. li. A. fo.* 343, and *Pasche*, *li. A. fo.* 797.

Dom. Gerrard contra *Parker*, 12 *Jac. li. A. fo.* 1404.

Elrington contra *Whetstone*, in 39 *and* 40 *Eliz.*

Certain examined here.

Eaton contra *Gwyn*, 11 *and* 12 *Eliz. fo.* 206, the defendant not to be released out of prison, till he hath paid the fine to the Queen.

To be paid before enlargement.

Farmor contra *Smith*, that a fine levied by the practice and fraud of a tenant at will, copyholder, or a terminor for years upon covin, to bar the lord of his inheritance (though the proclamation and five years past without claim) doth bar the reversion of his inheritance or freehold, 43 *Eliz. li. B. fo.* 367.

Levied by fraud by a tenant five years past shall not bar.

Milward contra *Welden*, the plaintiff for putting in a long replication was fined ten pounds, and imprisoned, and a hole to be made through the replication, and hanged about his neck, and he to go from bar to bar, in 8 *Eliz. li. B. fo.* 678.

Fined for putting in a long replication.

Thorold contra *Thorold*, 17 *Jac.*

Wright contra *Booth*, the plaintiff (being simple) was drawn to levy a fine of his lands, yet ordered that the lands should be

Levied by a simple man, yet ordered to be restrained.

be re-assured, if the defendant did not pay a valuable consideration, or if he failed of payment thereof, then the said lands should be re-assured, 3 *Jac. li. B. fo.* 508.

Lewis contra *Vaughan*, 4 *Jac. li. A. fo.* 835.

Void yet relieved.

Scambler contra , in *May*, 13 *Car.* because a fine was not levied according to covenant, a power became void to make leases, but decreed, but the last order, in 15 *Car.*

Longman contra *Hopgood*, a fine imposed for breach of a decree, *Trin.* 6 *Car. li. B.*

Imposed to take money and goods, &c.

Russell contra *Read*, 11 *Car.* a warrant to the Serjeant at Arms to go into the Fleet, and to take the defendant's money and goods to satisfy a fine.

Barker contra *Shepheard*, about *Mich.* 9 *Car.* a fine imposed, and parties pillored and imprisoned, and laid in irons for abusing a man for serving a *subpœna* in the King's Bench.

Moderated.

Long contra *Snagg*, this Court doth rate and moderate a fine, 12 *Jac. fo.* 157.

Hopton contra *Higgins*, a fine is not to be decided by witnesses, but by court rolls, and ordered to go to hearing upon them, in 10 *Jac. li. B. fo.* 176.

Thynn contra *Carey*, how far a fine at common law, after five years, shall bar a title in equity, 10 *Car.*

Birraston

Birraston contra *Walsh*, whether fines be certain or not, to regulate the same, the most number of court rolls to determine the same, and the time, 14 *Car.* and *Mich.* 15 *Car.*

Regulated by the most number of court rolls.

Clarkeson contra *Vigerons*, half a year's full value.

Sacherverell contra *Brimington*, the defendant pleads a fine levied by a lunatic, overruled in *Trin.* 15 *Car.* and an order too for a commission to examine whether a lunatic or not.

Ashfield contra *Crispe*, a fine *sur concessit* after five years upon a mortgage in *Mich.* 13 *Car.*

Sur concessit relieved, &c.

FORGERY.

75.

Barker contra *Ireland and Morris*, a person sentenced in this Court for forgery, in 8 *Jac. li. A. fo.* 1172.

Forgery here punished.

FEOFEEES.

76.

Billingsley contra *Mathew*, the Court orders the surviving joint feoffee to make sale of lands for payment of debts as well as if the other had been living, in *Mich.* 12 *Jac.* and before.

Feoffees a surviving joint feoffee to make sale of lands, etc.

Mildmay contra *Com. Warwick*, feoffees in trust to be examined as witnesses, in *Hil.* 1 *Car.*

In trust to be examined as, &c.

Ayre

For wife compelled to join.

Ayre contra *Jennings*, feoffees trusted for the good of a wife, compelled to join in sale of lands, in *Hil.* 2 *and* 3 *Car.*

Clotworthy contra *Hunt*, feoffees for a town, nor recorder, to be examined, but for matter of fact, *Trin.* 2 *Car.*

FEOFFMENT.

77.

Liddalls contra *Vanlore*, about an occupant to uses, or a feoffment in trust, 2 or 3 *Car.*

Dux Buckingham contra *Paul*, in *Mich.* or *Hil.* 5 *Car.*

Lilley contra *Gilbie*, *Mich.* or *Hil.* 5 *Car.* to compel a man to execute a feoffment.

FORFEITURE.

78. Forfeiture of a copyhold relieved.

Poore contra *Oxenbridge*, although a tenant hath forfeited her copyhold, yet relieved here, in 9th *Nov.* 44 *Eliz.*

Whistler contra *Cage*, *Pasche vel Trin.* 7 *Car.*

GOODS.

79. Goods.

Popham contra *Hinton*, to go into the personal, and whether a statute be goods, and betwixt goods inventoried and a *peraporconalia*, how far shall go into estate, after it was in Orphans' Court.

Haynes contra *Child*, concerning the contingency or goods, 9 *Car.*

Leate

Leate contra *Turkey, Company of Merchants*, if a consul beyond sea hath power, and do levy goods upon a private merchant, the company must bear it, if the factor could not prevent the act of the consul, *Hil.* 1630.

HEIR.

80.

Heir is not bound by the father's bargain.

The heir is not in equity bound to assure lands, which his father bargained and took money for. *Weston* contra *Danvers*, 1584.

Of a mortgagor not to be relieved.

Michill contra *Chamberlaine*, in 7 *Car.* an heir of mortgagee not to be relieved after several dismissions and decrees, unless can prove an extraordinary value of the land.

Porter contra in 11 *Car.* one *Brett* provides, that his heirs, executors, or administrators, shall have power to redeem lands, the plaintiff is neither, but as an assignee from *Brett*, yet shall have power.

Breach of condition holpen against the heir.

Salmon contra *Vaux*, an heir at law seeks to take advantage upon breach of condition, because legacies were not paid according to the will, but because there was an intention to pay it, and an agreement between the sisters, decreed against the heir, in 11 *Car.*

Archer contra *Partridge*, 9 *Car.*

Cooke

Cooke contra *Tookey*, *Pasche* 15 *Car.* by great advice.

Bound by his father's covenant, though claims not by descent.

Poole contra *Poole*, the defendant coming in by grant, and not by descent from his father, it is pretended he ought to be bound by the father's covenants, and as executor hath no assets, yet ordered to be liable, in *Mich.* 14 *Car.*

81. Husband.

HUSBAND.

The master of King's College, in *Cambridge* contra *Ragland*, the defendant's wife would not bring in evidences according to an order, the husband was bound that she should do it, 4 *Eliz. li. A. fo.* 73.

Ackland contra *Dom' Perriam*, the plaintiff marrying one *Mallett*, widow, who made a conveyance to the defendant's husband in trust, and received the profits of the land accordingly, but died before any satisfaction made, the wife being sued demurs, because the plaintiff doth not sue as administrator, and that the profits were received before she was married to the defendant, nor hath made any title to himself to the goods of the said *Mallett*, which notwithstanding was overruled, in *Fac. li. A. fo.* 78.

Dom. Griffin contra *Tailor*, 3 *and* 4 *Car.* the Court ordered a man to procure his wife to acknowledge a fine of mortgaged lands.

INDUCTION.

82. Induction.

Webb contra *Smart*, 5 *Jac. li. A. fo.* 302, the plaintiff being inducted to a parsonage, the defendant notwithstanding keeps the possession by force; whereupon the plaintiff was enforced to prefer his bill in this Court, but the defendant demurred, because the vicarage is as his freehold and inheritance, and so properly determinable at law, yet the demurrer overruled.

Bird contra *Smith*, 3 *Jac. li. A. fo.* 819.

INFANTS.

83. Infants.

Copyhold surrendered to the use of an infant, to the intent he should pay an annuity to another at full age, which he refused to do, and it was decreed he should pay it, and the arrearages. *Sawyer* contra *Gillett*, 9 *Eliz.*

Bound.

In a cause between the Lady *Russell* and the Earl of *Lincoln*, the plaintiff's counsel moved the Court to give order against the younger Earl of *Bedford* being an infant, vouched a case, 11th *Nov.* 6 *Eliz. li. B. fo.* 426. Between *Altham* and the Lord *Morley*, where between the date and sealing of a conveyance, the Lord *Morley* conveyed the land to an infant, wherefore *Altham* had order against the Lord

Lord *Morley* and infant, an infant concluded 6th *Jan.* 36 *Eliz. Preston, Trin. College,* and *Wood,* in *li. A. fo.* 330, and a bad lease in and *Wester* and *Talpitt,* 37 *Eliz. li. B. fo.* 206. Infants bound till they come to age and undo it by a bill. *Burch* contra *Morris,* land conveyed to feoffees to the use of an infant bound, in 5 *Jac. li. A. fo.* 323.

Oliver and King contra *Challinor,* the plaintiff being an infant was committed to the prison of the Fleet, for not obeying a decree, 11 *and* 12 *Eliz. li. A. fo.* 213.

Digman contra *Hamond,* 12 *Eliz. fo.* 356, the defendant made secret conveyances (depending the suit) to defraud the plaintiff being an infant, the defendant bound by recognizance to discharge all estates so made.

Made executor to prevent payment yet liable.

Dom. Leppington contra *Barnes,* the plaintiff's husband made an infant executor to prevent payment of debts not fit to undertake it, but another administrator for him during his nonage, yet liable for payment of debts, in *Mich.* 9 *Jac. fo.* 362, and 1092.

To answer.

Hare contra *Hide,* a bill preferred against an infant, and he ordered to answer, *Hil.* 3. *Jac.* and *Pasche prox'.*

Bound by decree.

Wadham contra *Moore,* an infant bound by decree, albeit he was but twelve years, 37 *Eliz. li. A. fo.* 489.

Wood

Wood contra *Norton*, a demurrer, because sues not as guardian, but because as *prochein Amy*, ordered to answer, in *Hil.* 2 *Car.*

Hill contra *Hill*, in 7 *Car.* to examine a guardian as a witness. To examine a guardian.

Young contra *Stowell*, concerning the granting of an office in reversion to an infant, 8 *Car.*

Rayner contra *Rayner*, in 13 *Car.* how far an infant shall be bound to give a legal discharge of money due to them.

Rivers contra *Comit' Dorset*, how far this Court shall bind an infant by consent of parentage, in 6 *Car.*

Lyde contra *Somister*, the manor of *Panington*, an infant of twelve years may surrender, *Trin.* 15 *Car.*

Hartwell contra *Ford*, a lawful age of infant shall be intended twenty-one years, unless in a particular case of guardian in socage, 11 *Car. fo.* 341. May surrender.

INCLOSURES.

84. Inclosures.

Piggot contra *Kniverton*, 4 *Jac. li. B. fo.* 101, because lands had been inclosed thirty years by consent of most of the parishioners, therefore they should continue inclosed.

Comes Huntingdon contra , in *Hil.* 8 *Jan.*

Cartwright contra *Drope*, the Court compels certain men that would not agree to inclosures to yield unto the same, and binds a college that would not consent, having lands within the said manor so inclosed, *Mich.* 17 *Jac. li. A. fo.* 549.

Another between *The Prebends and Scholars of Magdalen College*, in *Oxon*, contra *Hide*, compelled to an agreement, *Pasch.* 10 *Jac. li. B. fo.* 826, and 10 *Jac. li. A. fo.* 426.

Danvers contra *Dodford*, concerning inclosures, *June*, 7 *Jac. vel Car. fo.* 995.

Eaton contra *Hill*, 16 *Jac. li. A. fo.* 981.

Morgan contra *Clarke*, 5 *Car. li. B.*

Cripps contra *Clamer*, 17 *Jac.*

Tirwhit contra , 15 *Jac. li. B. fo.* 480, inclosures.

Freake contra *Loveden*, inclosure of wastes and common decreed, being for the common good, 12 *Jac. li. A. fo.* 372.

Decanus and Capit Westm' contra *Eldridge*, *May*, 15 *Jac. li. B. fo.* 892.

Fleetwood contra *Lenton*, about 5 or 6 *Car.*

Monson contra *Broxholme*, *Trin.* 11 *Car. vel Jac. li. B.*

Tiffin contra *Harris*, 6 *Car.*

Gilpin contra *Hillersaen*, 20 *Jac. li. A. fo.* 887.

Barkley contra *Evet*, concerning inclosure, where some not consent, are compelled, 8 *Car.*

Trigg

Trigg contra *Payte*, a decree made to overthrow inclosures, if the defendant will not recompence the plaintiff so much as he hath been prejudiced by the inclosure being a depopulation, although a remedy at law upon the statute, in *Mich.* 20 *Jac.* and *Mich.* 22 *Jac.*

Capella de New Elmes contra *Erbury*, demurrer overruled where a parson will not answer, nor be compelled to an inclosure, though for common, good, in 5 *Car. li. A. fo.* 461.

Ingram contra *Wells*, the Court will not bind a man to an inclosure that never assented, 2 *Car.*

Fox contra *Shrewsbury*, the defendant, because agreed to an inclosure, but after disassented, decreed according to the agreement, 13 *Car.*

Theed contra *Hamwell*, two inhabitants, no parties to articles for an inclosure, in *Mich.* 2 *Car.*

Wright contra *Stamford*, my Lord Keeper will not confirm articles upon an inclosure, unless the same arable way be maintained as before the inclosure, 10 *Car.*

Dom. Lumley contra *Sands*, an agreement fourteen years since for good of several towns and highways set, decreed, in *Hil.* 14 *Car.*

Moreton contra *Winton*, inclosing and continuing

continuing of inclosures, and stinting of cattle, in 12 *Car.*

INTERROGATORIES.

85. Interrogatories not admitted after a commission.

Berryman contra *Berryman*, no interrogatories admitted here in Court after commission taken away to cross the plaintiff's examination, *Mich.* 13 *Jac. li. B. fo.* 27.

Lewis contra *Owen*, examined in Court upon new interrogatories if it be joint-commission, *Mich.* 13 *Car.*

INTEREST.

86. Interest.

Weldon contra *James*, if a surety payeth brokage, in some cases interest upon interest allowed, 14 *Car.*

INJUNCTIONS.

87 Injunctions.

Cockshot and *Parke*, an injunction was against the plaintiff, and all claiming under him, to suffer the defendant to enjoy possession, one *Wilkinson* bought the lease, which *Cockshot* the plaintiff claimed by, and then to avoid the injunction, took a lease till it should be seen how the old lease should be avoided.

Servington contra *Webb*, 12 *Eliz. li. A. fo.* 176, an injunction for possession, because the defendant would not perfect assurance to prevent a mischief.

Barkley contra *Pierson*, an injunction to

to stay proceedings at law upon treble damages, notwithstanding the cause dismissed to the Ecclesiastical Court, *Trin.* 17 *Jac.*

Buck contra *Wood*, 12 *Jac. li. B.*

Tiffin contra *Tiffin*, *Hil.* 17 *Jac.* an injunction against creditors, although none have, about *Trin.* 16 *Jac.* or after. Against creditors.

Finch and his creditors, in *Hil.* 17 *Jac.*

Finch contra *Hicks*, *Hil.* or *Pasch.* 17 *Jac.*

Troit contra *Wallen*, injunction *sine die* awarded, and the money unjustly procured, restored, *Mich.* 12 *Jac. li. B. fo.* 322. *Sine die.*

An injunction to stay proceedings in the Spiritual Court, 30 *Eliz. li. A. fo.* 528, or 28.

Catwallell contra *Wynn*, an injunction to stay judgment and execution in the Exchequer, *Hil.* 35 *Eliz.*

Episcopus Hereford contra *Carpenter*, an injunction to stay proceedings after a judgment, the defendant taking out execution notwithstanding is in contempt, *Trin.* 6 *Car.*

Fisher contra *Payne*, about 6 *Car.*

Parker contra *Bowers.*

Uvedale contra *Harvy*, and

Beamont contra *Harvy*, all in 7 or 8 *Car.* and to stay proceedings in the Ecclesiastical Court.

Treswell contra *Guibon*, 9 *Car.* an injunction to stay proceedings in the Exchequer.

Miller contra *Societat' Girdlers*, an injunction to stay suit upon an action brought for perjury, before the cause in question here heard, 22 *Eliz. il. A. fo.* 497, and concerning a promise to make a lease from the corporation.

Knight contra *Parson*, an injunction for stay of a suit at law in an assize for writ of redisseisin, touching the office of Chester herald, and the profits thereof, in 10 *Jac. li. B. fo.* 177.

Hewes contra *Blewet*, an injunction to stay proceedings upon a *quare impedit*, in 10 *Car. fo.* 202.

Curteen contra *Heveene*, marsh grounds stayed from ploughing, *Hil.* 8 *Car.*

Aylett contra *Aylett*, an injunction to stay proceedings in the Arches or Admiralty, 33 *Eliz. fo.* 172.

Smith contra *Snotsbull*, an injunction to establish possession, and to stay suits in the Court of Wards, and an attachment awarded for serving an order of the Court of Wards, to stay suit here, in 33 *Eliz. fo.* 176.

Tanfield contra *Davenport*, the defendant sues in the Ecclesiastical Court for a portion due to his wife, this Court orders an injunction to stay proceedings there, till he shall make a competent jointure, in 14 *Car.*

Shelton contra *Stanley*, an injunction and

and commission to the sheriff by one order of 13 or 14 *Car.*

Dominus Baltimore contra *Reynell and Sands*, an injunction to quiet possession such as at bill only, *Hil.* 15 *Car.*

Arundell contra *Arundell*, an injunction granted against the issue in tail, to stay the reversing of a fine levied by himself, and (I think) his father also, in 40 *Eliz. li. A. fo.* 270, and 640.

Bury contra *Conisby*, a verdict at the common law to avoid a lease for three lives, because the lease was to commence at a time to come, which is void in law, yet an injunction to continue possession, 23 *Eliz. li. A. fo.* 38.

JUDGMENTS.

Upon affidavit, endeavour used to have served process to hear judgment, and could not find the defendant, the Court proceeded, *Windham* and *Harwood.*

A judgment to let to examine in equity, so the truth of the judgment not examined, as where judgment against the truth of an acquittance without a seal, or where the money paid after the day, *Heard* contra *Doddington.*

Owen contra *Dom. Deancourt*, a judgment of a debt, and a fine to a purchaser, acknowledged

acknowledged all in one day, the judgment to be preferred, in 4 or 5 *Car.*

Godshall, in *Mich.* 5 *Car.* for assigning of a judgment for contribution.

Comitissa Winchelsea contra *Tuston*, concerning signing over bonds, 6 *Car. li. B.*

Judgment at law decreed here.

Allen contra *Glomvile*, 4 *Jac.* a decree after judgment at law.

Courtney contra *Glanvile*, 10 *Jac. li.* 1. *fo.* 474.

JOINTURE.

89. Jointure in money not to be touched for husband's debts.

Ash contra *Dom. Forrest*, a jointure in money not to be touched for the debts of her husband, *Mich.* 9 *Car.*

Nash contra *Preston*, concerning a jointure, and not the inrolment of a deed, supplied in *Pasch.* or *Trin.* 6 *Car.* and judge's certificate.

Knivet contra *Baxter*, a jointure in money or lands, the use thereof in equity shall go to the payment of debts. *Pawlet* contra *Dom. Malburgh*, in 8 *Car.*

Knightley contra *Bevill*, in Mr. *Churchhill*'s note of *Trin.* 8 *Car.*

Palmer contra *Cleveland*, the contrary, in *Mich.* 8 *Car.*

Dom. Howard contra *Comit' Nottingham*, a jointure confirmed, although by tenant, *Mich.* 9 *Car.* and *Pasch.* 7 *Car.* the order upon hearing.

JURISDICTION.

JURISDICTION.

90. Jurisdiction of *Chester* allowed.

Davenport contra *Deane*, the Court will in nowise retain a suit of the lands which lie in the county palatine of *Chester*, 12 *and* 13 *Eliz. fo.* 399.

Monshall contra *Fewce*, in 17 *Eliz.*

Daniel contra *Jackson*, *Nov.* 17 *Eliz.*

Cleeve contra *Brooke*, 15 *Eliz.*

Bradley contra *Browne*, the like 15 *Eliz. fo.* 400.

Wentworth contra *Taccon*, in 16 *Eliz.*

Dom. Savill contra *Savill*, concerning the custom of the province of *York*, in *Mich.* 1634.

This Court not to be stayed by an injunction out of the duchy, *Barnard* contra *Langley*, in 1633.

Tenants of Barwick contra *Cæsar*, decree here, after a decree in the duchy, because it was ordered they had no jurisdiction, the lands being out of the duchy, but held off *East-Greenwich*, 8 *Car.*

Levingston contra , about 10 *Car.*

Of *Cinque Ports* overruled.

Scofield contra *Finch*, *Feversham* privilege overruled, in 25 *Eliz. li. B. fo.* 131.

Against the stannaries.

Trinick contra *Bordfield*, to stay proceedings in the stannaries, in 14 *Car.*

Dom. Scroope contra *Lasonby*, depositions taken at *York* to be used here, *Pasch.* 2 *Car.*

Simonds

Against the Court of Requests.

Simonds contra *Harbie*, this Court declareth that the priority of a suit in the Court of Requests, shall not hinder the proceedings in this Court, in *Hil.* 15 *Car.*

Tollakerne contra *Steward*, a demurrer because the matter was dismissed in the Court of Requests, upon a full hearing overruled, in *Hil.* 15 *Car.*

Askwith contra *Chamberlaine*, though one *Miller* (no party to a suit here) preferred a bill in the Court of Requests, an injunction awarded to stay proceedings there, in *Pasch.* 16 *Car.*

JOINT TENANCY.

91. Jointtenancy.

Dorne contra *Dorne*, concerning the disposing of a joint tenancy, in 5 *Car.*

Pettit contra *Styward*, two joint tenants, one by will giveth his part, good in equity, and whether a wife of a feoffee shall have dower or not, in 7 *Car.*

INVENTORY.

92. Inventory.

Hewet contra *Baker*, in *Pasch.* 15 *Car.* where the defendant did not exhibit an inventory, the Court chargeth the whole legacy on him after twenty years, though pretended not sufficient.

LAND.

93. Land sold away and tenure reserved.

Where new annexed land is sold away in

in fee, and a tenure in *capite* reserved, it is pleadable here, *Crompton* contra *Clifford*, in *Pasch.* 37 *Eliz. li. A. fo.* 128.

Skinner contra *Skinner*, in *Trin.* 42 *Eliz.* the father of the plaintiff and defendant devised certain lands to the youngest son, which he purchased, the eldest son suing for the same, is decreed according to the devise.

Thynn contra *Kinsmell*, money devised by the plaintiff's father to the plaintiff, out of certain lands which were to be sold by the defendant, the lands were intailed, and provided, that if the heirs went about to sell the same, it should be void, being against the statute of 32 *H.* 8, it is ordered to be sold in 38 *Eliz. li. B. fo.* 97, and concerning a discontinuance.

Manwayring contra *Dudley*, the plaintiff's wife's father made a feoffment to uses for thirteen years, to raise portions of four hundred pounds for his daughters, the father being dead, the feoffees suffer the son and heir to enter into the said land, and sold the same, and yet after a descent, after the death of the first purchaser, at the third hand, although the money be due, yet the Court would not charge the lands with the said money, the example being dangerous, in *Hil.* 43 *and* 44 *Eliz. li. B. fo.* 306.

Hungate contra *Hungate*, the plaintiff's father

father being a bachelor, purchased an estate in the defendant's name, but after having issue, the plaintiff, the Court decreed that the lands should go to the plaintiff, and be re-assured by the defendant, in 4 or 5 *Jac. fo.* 1070.

Bowell contra *Hancocks*, a purchaser discharged from a statute in 11 *Jac. li. A. fo.* 344.

7 *H.* 7. 10. *A.* had lands descended to him in ancient demesne, extended by statute-merchant, *B.* purchased the lands, and had a recovery by sufferance, in the Court of ancient demesne upon a voucher, and ousted *A.* *A.* brought a *subpœna*, and it was holden that *A.* could not satisfy the recovery, and therefore should be restored to the possession by the Chancery, for he had no remedy by law, where, notwithstanding a double judgment, yet the judges directed them to the Chancery.

Buggs contra *Sumpner*, 8th *June*, 43 *Eliz.* lands given for the discharge of poor inhabitants of a parish, for discharge of fifteens and taxes, with a proviso, that the rents should not be to the discharge of gentlemen's lands of the parish, but of poor men's only, the defendant being but a yeoman (though he have purchased some of the gentlemen's lands, and sought to have benefit of the gift) yet not allowed, in 8th *June*, 43 *Eliz.* *Townsend*

Townsend contra *Kilmurrey*, fee-simple land purchased hy the father, and descended to the son, this land shall not be assets in law, nor equity to pay debts, 13 *Car.*

The Countess of Exeter's case.

Episcopus Heref. contra *Awbery*, where the quantity of a yard-land is not known, a commission to set out so much land as the commissioners shall think fit, upon common intendment, in *Hil.* 14 *Car.*

Eborall contra *Hunt*, lands passed in a feoffment more than was meant, was holpen in equity, notwithstanding a verdict and judgment at law, supposing some circumvention.

Hire contra *Wordall*, lands devised to be sold, and the money thereof coming should be devised to children, but the lands could not be sold, because there was none appointed by the will to sell the same, yet ordered to be sold, and the lease was for a thousand years, which is most commonly to prevent the king's right, in 39 *Eliz. li. B. fo.* 134.

LEASE.

94. Lease defective not supplied in equity.

A lease containing a messuage in the demise, but land also in the *habend*', which land had been many years enjoyed accordingly, yet the Lord Chancellor's opinion

nion was, no continuance would make a void lease good, especially against a purchaser, *Meld* contra *Cooper*, in 25 *Eliz.*

Bradshaw contra *Bradshaw*, in 16 *and* 17 *Eliz. li. A. fo.* 309.

Collins contra *Syms*, look from *Feb.* 26. *Eliz. li. fo.* 358.

Ellis contra *Beswick*, the contrary, 36 *Eliz. li. A. fo.* 654.

A lease devised to one for life, with several remainders over to others, the first devisee was compelled to enter bond, to let it go according to the devise, but if it were for a perpetual chattel, the Court would not have done it. *Price* contra *Jones*; 26 *Eliz. fo.* 599.

Alston contra *Easter*, *Trin.* 7 *Car.*

Jones contra *Frederick*, 12 *Jac. li. B. fo.* 303, the Court will not charge the administrator of an executor.

Smith and Gawdy contra *Compton*, 14 *Nov.* 41 *and* 42 *Eliz.* *Tudnam*, the contrary *Tudnam* contra *Glanville*, 36 *Eliz. li. A. fo.* 396.

Long leases dismissed.

No relief in equity touching leases of one thousand years, because they tend to defraud the crown, in 39 *and* 40 *Eliz.* *Risden* and *Tuffin*.

A stranger having a lease before a decree, which was not bound thereby, and the same lease being over-wrought by a statute which was bound by the decree, bought

bought the extent of the statute, and therefore his lease was therefore bound by the decree, so long as the extent should have continued, if it had not been bought. *Arden* contra *Hanbury*, or *è contra.*

Leases made by deans, canons, or colleges, &c. for twenty-one years, or three lives, are here relieved. *Simeon* contra *Decanus de Windsor*, *Trin.* 15 *Jac. li. A. fo.* 1177.

Long contra *Decanum Bristol*, 3 *Car.*

Episcopus Dunelme' contra *Martin*, *Trin.* 5 *Car.*

Comes Oxon' contra *Gooth*, *Pasche*, 14 *Jac. Derham* contra *Christ-church*, *Mich.* 10 *Jac. li. B. fo.* 64, the contrary.

Monsen contra *Aiscough*, the defendant upon an award did covenant that the defendant and his wife should make a lease void of all incumbrances, yet after denied, and pretended that a former estate was made to his children, so that it was not in his power, and brake off the sale of the said agreement or lease, whereby it was void in law; the Court ordered the award to be performed to all intents and purposes, 11 *and* 12 *Eliz. li. A. fo.* 510, and afterwards, for not performing the same, was committed, 12 *and* 13 *Eliz. li. A. fo.* 204, and afterwards he was to become bound by a recognizance to yield himself to the prison, which he did not do,

do, therefore the plaintiff might, and was licensed to take execution upon that recognizance, *eodem folio*, 328.

Golding contra *Tuffin*, a lease for many years, although it be intailed to many in remainder, decreed to be sold for payment of debts, *Mich.* 10 *Jac.*

The like 17 *Jac. Hubbard* contra *Hare*, *li. A.* 944.

Harvey contra *Withers*, in *Pasche*, 24 *Jac.* intailed lands sold for payment of debts.

Powell contra *Moulton*, a lease intailed not subject to debts, though the lease or assignment supposed to be void, because intended, and the defendant to pay debts out of the personal estate, 5 *June*, 3 *Car. li. B. fo.* 1441.

Chambers contra *Gregorie*, a lease made for years, and a statute for quiet enjoying, the statute was delivered with the lease, but not assigned; whereupon the assignee of the lease procured letters of administration of the goods and chattels unadministered, of the cognizor of the Statute, and extended the same, which administration being repealed and granted to another, the Court and judges ordered the estate by that Statute to be determined, 22d *Nov.* 9 *Car.*

Birkenhead contra *Birkett*, a lease made for forty years, by the master and brethren of

of the hospital of Saint *Katherine's*, allowed for, good, *Hil.* 1632.

Bampton contra *Freake*, a decree to restrain the defendant from selling of a lease contrary to the intent of the ancestors, in *Oct.* 9 *Jac.*

Huddleston and *Lamplugh*, concerning a lease attending upon an inheritance, and concerning the disposing of the same, and likewise of a trust, in *Pasche*, 6 *Car. li. A. fo.* 769.

Stradling contra *Smith*, where a lease is made to feoffees, to the use of the wife of the feoffor, the feoffor and wife covenants, that they will levy a fine to extinguish the rent, which was done accordingly, not mentioning a lease of one hundred years, which was made over to the said feoffees to her use, the Court decreed that the lease should be cancelled, 1 *Car. li. A. fo.* 182.

Kitson contra *Williams*, a lease made good, though a former conveyance to feoffees in trust and concerning a springing use supplied in this Court, and raising of daughters' portions by the feoffees, in 6 *Jac. fo.* 618.

Comes Oxon' contra *Neeth*, 13 *Jac. li. A.* a lease made by a college contrary to the statute, 13 *Eliz.* (though a demurrer) and the defendant would not answer, yet the Court proceedeth; after the demurrer cer-

 tified

tified not good, the defendant stood in contempt, the plaintiff was admitted to proceed to his proof without answer. And it was in *Fenning's* case contra *Tayler*, in 38 *and* 39 *Eliz.* and the bill was taken *pro confesso*, and this after a verdict and judgment at law upon a statute law. The law of God speaks for him, equity and good conscience speaks for him, and the law of the land speaks not against him, *Deut.* 28, 30, this was too for building upon a voidable lease and improvement in *London.*

Rumney contra *Garnous*, 16th *June*, 36 *Eliz.* a lease made to two during their lives, and after to the use of such of the children begotten by *Peter Rumney*, this being without any express conclusion what child or children, the construction touching the uses, is to be made as near as may be, to the meaning of the said parties, who conveyed the same to uses.

Williams contra *Moone*, concerning a lease, *Paroll*, 23 or 24 *Eliz. li. A. fo.* 624.

Lease parol.

Bullon contra *Scivell*, a decree against a lessee of a prebend, to build a house upon the prebend, where none was when the lease was made, because in the lease, a house was demised, *Mich.* 14 *Jac.*

Gage contra *Scory*, *Hil.* 5 *Jac. li. B. fo.* 878, the plaintiff being possessed of a lease from the King being defective, the defendant

defendant would have avoided it, by composition with commissioners for defective titles, yet relieved here, or any estate whatsoever in like cases.

Harry contra *Halfe*, in *Hil.* 5 *Jac. fo.* 466, *li. B.* either for years or for dower.

Windham contra *Bartram*, *Feb.* 11 *Jac.*

Blackell contra *Brooke*, *July*, 4 *Car.*

Stiles contra in *Mich.* 3 *Car.* how far a lease for life, shall be assets in equity.

Barton contra *Mawd*, 25 *Eliz. li. B. fo.* 35, a lease was made to one, before the expiration of a former lease, though great question among the Judges, yet determined to be a good lease.

Brooke contra *Decanum* and *Capit' Ecclesiæ Cathedral'* in *Oxon'* and *Daniel* the defendant (by mistaking of a clerk) in this word, that the demise, by consent of the whole chapter of the same house have demised, where it should have been the dean and chapter, in 37 *Eliz. li. A. fo.* 552.

Dominus Awdley contra *Sidenham*, in 32 *Eliz. li. A. fo.* 251.

Taylor contra *Slecombe*, in 2 *Jac. li. A. fo.* 749.

Ellis contra *Beswick*, 36 *Eliz. li. A. fo.* 537, a house or tenement edified upon a marsh leased with the appurtenance, the marsh passeth not by law, yet holpen in equity against the heir.

Prince

Prince contra *Green*, a lease made to the defendant by tenant in tail, for forty years, and to commence at a time to come void in law, yet holpen in equity, and the intent of the party performed, in *Trin.* 40 *Eliz. li. B. fo.* 111.

Little John contra *Fortescue*, the defendant was required by the Court to consent to a decree, if he refused, then it should be judicially against him, that the plaintiff should enjoy the leases made by the defendant's father, which he supposed were void in law, 36 *Eliz. li. A.*

Preston contra *Wood*, the plaintiff, and Trinity College being lessees from the defendant, he knowing the lease to be void, for not right naming of the corporation, in 36 *Eliz. li. A. fo.* 330.

LESSEE.

95. Lessee.

By the Judge's opinion, a lease is good though no lessee is named in the demise, but in the *Habend*, *Buller* contra *Doddington*, 22 *Eliz. li. A.*

The Court compels a lessee for years, to discover what estate of a conusor's, to the end it may be liable to a statute, 25 *Eliz.* it is between *Titchborne* and *Doddington*.

Snagg contra *Snagge*, 34 *Eliz. li. B. fo.* 294, to shew commencement, term, things demised, rent, what days of payment of rent, and covenant.

LEGACY.

96. Legacy given upon condition not to marry without friends' consent, refuse to pay, yet ordered.

Yelverton contra *Newport*, 36 *Eliz. li. B. fo.* 101, the plaintiff's wife had given her by her father's will, three hundred pounds, conditionally, that she should not marry without the consent of friends, refused to pay, yet ordered.

Called in question after sixty years, dismissed.

Simons contra *Lee*, a legacy called in question threescore years since, by bill in this Court, dismissed in *April*, 11 *Jac.*

Wilcox contra *Cole*, about 19 *Jac.*

White contra *Simpson*, legacies to particular legatees, and the surplusage to the rest of the kindred, they shall be limited to the fourth degree, and a time appointed to come in, or else excluded, in *Hil.* 5 *Car.*

Gipp contra in *Mich.* or *Hil.* 6 or 7 *Car.*

April, 8 *Car.* and if suit hath priority here, to reverse a sentence in the Spiritual Court, and in *Mich.* 3 *Car.* my Lord allows twenty marks for money detained in the same cause.

Comes Pembroke contra *Zouch*, a legacy decreed, in *Mich.* 7 *Car.*

Holme contra *Fletcher*, concerning a legacy, in *Mich.* 2 *Car.*

Vitner contra *Pix*, a legacy given to a daughter, upon condition that she should behave

behave herself dutiful towards her mother, she married without the consent of her mother, whether this be a breach of condition to avoid the portion, in 14 *Car.*

LEGATEE.

97. Legatee. *Wasby* contra *Johnson*, how far a release shall bind legatees, when they know not the estate, in 14 *Car.*

LUNATIC.

98. Lunatic. *Bonner* contra *Thwaits*, the Court will not retain a bill to examine point of lunacy, 10 *Jac. li. B. fo.* 358.

Thomas contra *Howorth*, a lunatic to answer by his friend, in *Mich.* 15 *Car.*

MARRIAGE.

99. Marriage. *Windham* being a widow, had a judicial order, and a commission to make proofs, and after she married, no bill of revivor needed, *Pasche*, 37 *Eliz.*

Leech contra *Radford*, concerning casual matches, in *Trin.* 7 *Car. Regis.*

MISTAKING.

100. Mistaking. The mistaking of a name of a corporation holpen in equity. Lord *Audley* contra *Sidenham*, in 32 *and* 33 *Eliz. fo.* 251.

But *Willis* and *Sprint*, contra 19th *June*,

33 *Eliz.* and *Brooke* and *Daniel*, 38 *and* 39 *Eliz.* holpen. *Pawlet* contra *Frie*, 26th *May*, 42 *Eliz.*

Goodfellow contra *Morris*, the mistaking of a name in a conveyance, (being heir male) holpen, and lands to pass according to the intent of the party; in the latter end of *Mich.* term, 16 *Jac. li. A. fo.* 350.

Mistaking by the clerk amended according to the record, *Inter Culpepper* and *Decanum* and *Coll' Winton*, in 4 *and* 5 *Edw.* 6, *fo.* 440.

Bleverhasset contra *Fuller*, the plaintiff makes a lease of lands to the defendant with a meaning, that all woods growing thereupon should be excepted, saving for necessary botes, but by mistaking of the clerk, in putting in (hereafter excepted) where there was no exception afterwards excepted; whereupon the defendant cuts down the woods, yet ordered to be stayed, in 37 *Eliz. fo.* 746 *and* 838, *li. A.*

Griffin contra *Sayer*, the plaintiff became surety for the defendant, to one *Buck*, in a bond of one hundred pounds, and the defendant giving a counter bond, to save the plaintiff harmless of a bond of two hundred pounds, whereby, by the mistaking, the counter bond was void by law, yet relieved here, *li. A.* 10 *and* 11 *Jac. fo.* 890.

Orrell contra *Leeke*, concerning a mistaking

taking of a power, yet made good to the lessee, in 20th *June*, 6 *Jac.*

Comitissa Oxon' contra *Stanhop*, where a power is mistaken or mis-recited, relieved here, *Trin.* 8 *Car.*

The word (heir) left out in the clause of a reservation, supplied in equity. *July*, 1606. *Baildon* contra *Church.*

Thorpe contra *Jackson*, misprision in a counter bond, 13 *Eliz. fo.* 193.

MORTGAGOR, MORTGAGEE.

101. Mortgagor, mortgagee.

The money paid upon mortgage, the mortgagor sueth to have the deed again, and not admitted, because then he may charge the mortgagee for profit past. *Langford* contra *Comit' Salop.'* 38 *and* 39 *Eliz.* and 4 *Eliz.*

Hanmer contra *Lochard*, a mortgagor relieved after the day of redemption, notwithstanding it was in infant's hands, and a purchase, *Trin.* 10 *Jac. li. B. fo.* 1000.

Ball contra *Spane*, 10 *Jac. fo.* 1151.

Chanticleere contra *Micheton*, in 27 *and* 28 *Eliz. li. A.* notwithstanding the mortgage, lands were alleged to be, *&c.*

Beale contra *Bradford*, 15 or 16 *Jac. li. fo.* 229.

Holman contra *Vaux*, about 13 *Jac.* the mortgagee to account for the profits received, and for the use of those profits.

Popham

Popham contra *Hinton*, about 3 or 2 *Car.* and in 21 *Jac.*

Maynard contra *Middleton*, in *Hil.* 7 *Car.* and *Pasche*, 8 *Car.*

Mortgage-money whether shall go to the executor or heir.

Pell contra *Blewet*, concerning a mortgage, and how the mortgagee shall account for profits received, and what casualties shall be allowed, and whether any, in 6 *Car. li. B.*

Mortgagor contra *Mortgagee*, (during the mortgage) contracts with another, the mortgagee had notice, if the moiety be paid by a stranger. *Hatton* contra *Prince*, 24 *Eliz.* *Wallet* contra *Lewknor.*

Bacon contra *Bacon*, the Court will relieve a mortgage to the tenth generation, though the purchaser had no notice, because it is supposed that he cannot purchase, but it must be derived from the mortgage, and in some cases, where the mortgagee will suddenly bestow unnecessary costs upon the mortgaged lands, of purpose to clogg the lands, to prevent the mortgagor's redemption, my Lord's declaration in *Churchill*'s note, in 15 *Car.*

MORTGAGE.

102. Mortgage.

Barnaby contra *Greene*, the plaintiff mortgaged lands to the defendant, which was forfeited, and a statute for performance of the bargain, ordered to be re-

assured, and statute to be re-delivered, 9 *Jac. li. A. fo.* 218 and 160.

The Court decreed money to the plaintiff against the defendant, albeit he had judgment and execution, being upon the point of usurious contract, and a lease being become forfeited, and the mortgagee devised the same to infants. The Court was of opinion that the plaintiff should have it again, paying the money. *Langford* and *Barnard*, 37 *Eliz. and* 28.

Ash contra *Wood*, and *Maynard* contra *Middleton*, a citizen having a mortgage forfeited to him, shall be put to the dividend, and not to the heir, 7 *Car.*

St. John contra *Grobham*, decreed to the heir, *Trin.* 11 *Car.*

Chapman contra *Porter*, with advice of Judges, about *Mich.* 17 *Jac.*

Landen contra *Cotten*, in *Pasche*, 13 *Car.*

Bromley contra *Dorell*, a mortgage forfeited twenty-four years since, demurred, yet overruled.

Thetford contra *Parr*, 8 *Car.*

Thetford contra *Rowe*, and *Rowe* contra *Thetford*, in 10 *Car. li. B. fo.* 210, after thirty years.

Flee contra *Drake*, about 10 *Car.* where in case of an infant, *&c.*

Harbert contra *Benion*, 14 *Car.*

Keebel contra *Powell*, notwithstanding lands

lands forfeited, and a release, mortgage relieved, in *Mich.* 2 *Car.*

Keeble contra , mortgages forfeited and released, yet to pay full value, or to re-assure the land, in 13 *Car.*

Newborough contra *Freake*, in 40 *Eliz.* dismissed, in 7 *Car.*

Fitzherbert contra *Leach*, *Mich.* 14 *Car.*

White contra *Pigion*, a demurrer, because the bill is to be relieved for a mortgage after forty-one years, but in respect there was a promise to be redeemed after twenty-seven years, in *Trin.* 15 *Car.* relieved.

MONEY.

103. Money

Prat contra *Awborne*, money delivered out of Court in nature of a sequestration, 3 *Car.*

With contra *Page*, the money after execution, to remain in the sheriff's hands till the hearing, *Hil.* 8 *Car.*

Ladkin contra *Sackville*, money decreed to be delivered to the plaintiff out of other men's hands, in the nature of a sequestration, 11 *Car.*

Carew contra *Peniston* and *Hales*, if money be let out without expression of interest, shall pay none, but if the trustee let it out to supposed able men (though they fail) will not charge the trustee for no more than he received, in 13 *Car.*

Poole

Poole contra *Harrington*, money by consent of the husband, put forth for the use of the wife, and gives power, she shall dispose thereof accordingly, but not allowed, in *Mich.* 14 *Car.*

NE EXEAT REGNUM.

104. *No exeat regnum* awarded.

Ne Exeat Regnum awarded by this Court, at the suit of men, in suit between party and party.

Welby contra *Welby*, in *Trin.* 19 *Jac. fo.* 1159.

Hasell contra *Badwick*, in 32 *Eliz. li. A. fo.* 442.

Lee contra *Bower*, *Trin.* 19 *Jac. li. A. fo.* 1155.

OATHS.

105. Oath.

Weldon contra *James*, in *Mich.* 10 *Car.* a man may dispose for small disbursements which he cannot make proof of.

ORDERS.

106. Order. One holpen in equity to that whereof he was in law barred by his own act.

Tamworth contra *Tamworth*, the rent suspended by an entry, and in equity, ordered to be paid, about 30 or 31 *Eliz.*

Price contra *Lloyd*, about 16 *Jac.*

About 2 *Car. Carew* and *Gill*, a fine ingrossed before (*quid juris clamat*) and yet was stayed about the same time.

Hallitey contra , in 2 *Car.*

The

The defendant hath pleaded *non est factum* at law to a bond of four hundred pounds for payment of fourscore pounds, which passed for the defendant, the plaintiff surmises that after trial the defendant promised payment of the eighty pounds, and the matter was retained, but the order for it was not entered, but it is in my note of 35 *Eliz.* 18th *May*, *Sutton* contra *Sutton.*

Welbie contra *Ap-Rice*, the Court doth order that the plaintiff and defendant shall be examined for discovery after or before hearing, in *May*, 37 *and* 38 *Eliz. fo.* 176.

Mascall contra *Shelley*, it was ordered that the defendant should pay unto one *Mathew*, money, who died before payment, yet the defendant should pay it to his executors according to the former order, 11 *and* 12 *Eliz. fo.* 176.

Mayor and Jurats de Feversham contra *Dominam Amcoats*, the defendant ordered (being tenant for life) to be examined for making known, to whom the reversion of the lands in question were to pass, which if she refuse, then the parties to proceed in suit, notwithstanding her present estate, in 11 *and* 12 *Eliz. fo.* 292.

Wilkinson contra *Deane*, *Mich.* 2 *Car. li. B. fo.* 88, the Court ordered and decreed, that the defendant should perfect

 the

the assurance intended in a paper draft, being that she refused, in 12 *and* 13 *Eliz. li. A. fo.* 55.

Inter Sherwood and Corbin and *Tomlinson* contra *Galding*, 11 *Jac. li. A. fo.* 672, or 762, and *Shapcot* contra *Dowrish*, *Trin.* 17 *Jac.*

Errington contra *Fenwick*, the defendant ordered to pay a rent-charge to the plaintiff, 8th *Nov.* in 7 *Jac.* but because the lands out of which the annuity issued was in infant's hands, could nor ought to pay it, in *Mich.* 9 *Jac. li. A. fo.* 214.

Austen contra *Cheney*, (a third person interested, but no party to the bill) prosecuteth suit at law for the matter in question, ordered to be made a party to that bill, and suits to stay in the mean time, *Trin.* 16 *Jac. li. B. fo.*

Fisher contra *Grivell*, the defendant ordered to pass lands, after time of demand past, 4 *Jac. li. B. fo.* 90.

Mullins contra *Southked*, an order against an infant, and when he came to age, ordered to perform it, *Trin.* 27 *Jac.*

Wadham contra *Mogg*, the heir ordered to perform a decree made against him in his minority, in 37 *Eliz. li. A. fo.* 489, there is another in 2 *Car.*

Lupton contra *Harman*, an order to stay the money in the sheriff's hands, and to be re-delivered out of the defendant's hands, *Pasche*, 16 *Jac. li. B. fo.* 869. *Edmunds*

Edmunds contra *Edmunds*, the defendant would have the cause dismissed, because it concerns the probate of a will, but in respect the will was made to the disinherison of the plaintiff of lands, as well as of goods, it is ordered to be examined here, in 12 *Jac. li. B. fo.* 404.

Perriman contra *Speccott*, *Hil.* or *Mich.* 6 *Car.*

Manning contra *Freake*, because the matter is of a penal and criminal nature, allowed for good, *Mich.* 15 *Car.*

Holme contra *Ailoff*, a *forma pauperis* for scandal to pay costs, 6 *Car. li. B.*

Higham contra *Ladd*, died before livery and seisin, and before assurance perfected, ordered to be perfected, *Pasche*, 7 *Car.*

Allen contra *Elborough*, ordered to stay execution upon an action of the case, 13 *Car.*

Haddon, a man ordered to procure his wife to levy a fine, and to enter into a new bond of five hundred pounds, because the old bond was worth nothing, upon the mistaking of the writer, 10 *Jac. li. B. fo.* 101.

Bayliff contra *Longworth*, in the Duchy Court, a note under the plaintiff's hand, ordered against an occupant, in 15 *Jac.*

Harcourt contra *Roberts*, a dumb man, ordered to answer upon interrogatories by Mr. *Colchester*, in 14 *Car.*

A dumb man to answer.

Taylor

Taylor contra *Hooe*, the defendant would not admit the plaintiff to his copyhold, for that the plaintiff committed a forfeiture in cutting down woods upon the copyhold, the defendant ordered to admit the plaintiff, tenant, for that the defendant could not prove that the same was done by the plaintiff's directions, but by a tenant, in 25 *Eliz. li. B. fo.* 78.

Finche's first precedent he made.

Quare impedit.

Pears contra *Trelawney*, a trial upon a *quare impedit*, upon point of simony, which is *pro hac vice*, the defendant grants away the next avoidance; the plaintiff, coming upon the King's title, desires to stay multiplicity of suits, and to have a settlement according to the first trial, ordered that there shall be no new trial, in *Mich.* 15 *Car.*

Cobb contra *Cobb*, the meaning of a will, ordered to be performed contrary to the general words in a feoffment, in 36 *Eliz.*

OPINION.

107. Opinion. Equity doth yield to law.

The Lord *Bromley* was of opinion in *Caudge and Lawyer's* case, 24 *Eliz.* that the land should go as the law had settled it and conscience should be supplied with money.

Ellis contra *Bastwick*, *Eliz. li. A. fo.* 537, the contrary.

The opinion of the Court was, the plaintiff

plaintiff having but a promise, could have no decree for the land, yet it might be decreed that the defendant might assure the land, *Ferne* contra *Bullock*, decreed upon a promise, and ten shillings in hand to assure, in *Nov.* 9 *Jac.*

Whether writings containing warranties belong to the executor or heir.

Dom. Buckhurst contra *Fenner*, question whether writings comprehending warranties, may by law be demanded, being brother and heir to the Lady *Dacres* against the defendant, to the custody of, she being her executor, she in her lifetime committing the keys of the chests where the evidences lay, they the defendants being in possession of the same, and claiming the manor and lands, which they conceive to be devised, and conveyed unto them by the said Lady; the Judges hold, and are of opinion, they belong to the plaintiff, in 37 *Eliz. li. A. fo.* 853, and 39 *Eliz. li. A. fo.* 775.

OUTLAWED.

108. Outlawed not admitted to sue.

Grevill contra *Bancks*, 4 *Jac. li. B. fo.* 69, the plaintiff being outlawed, not admitted to sue.

OUTLAWRIES.

109. Outlawries.

Whitney contra *Strachey*, outlawries must be pleaded all at one time, or otherwise compelled to answer, in *Mich.* or *Hil.* 5 *Car.*

Edwards

Edwards contra *Plowden*, if the plaintiff hath conveyed to the defendant for payment, of which the defendant pleadeth outlawry, then the defendant ordered to answer, *Pasche*, 5 *Car. li. A. fo.* 888.

Kingston contra *Pinchard*, *Mich.* 10 *Car.* pleaded at his own suit.

Preden contra *Dom' Mohune*, no advantage to be taken upon the outlawry of a stranger, 7 *Car. fo.* 169.

William contra *Gold*, concerning outlawries at stranger's suit, 7 *Car.*

Trion contra *Brocas*, because the outlawry was before the last general pardon, not to be pleaded, 7 *Car.*

Hemmings contra *Davers*, an outlawry being pleaded at the defendant's own suit, overruled, in 8 *Car.*

Kingston contra *Pritchard*, 10 *Car.*

Spry contra *Coryton*, outlawries overruled, in 10 *Car.*

OFFICES.

110. Office.

An office of town-clerk without patent decreed for life. *Corp. and Mayor of Lincoln*, *Pasche*, 30 *Eliz.*

PARSON.

111. Parson ordered to resign his benefice.

Everard contra *Bourcher*, a parson instituted and inducted by a wrong title by a common person, ordered to resign at the King's

King's suit, and the King presented, 8 *Car.* and *Attorney-General* contra *Smith*, *Mich.* 1632.

Holmes contra *Conway*, a patron let his parsonage by lease, in 15 *Jac.*

Harding contra *Weedon*, my Lord's declaration, that he will not bind a parson's successor, where the consent doth not improve his tithes in kind, in *Pasche*, 15 *Car.*

Not to be bound by his predecessor's act or consent.

Stubbey contra *Stubbey*, in *Mich.* 2 *Car.*

PASTURE.

112. Pasture ancient not to be ploughed up.

Brooke contra *Denton*, *Mich. or Hil.* 9 *Car.* ancient pasture not to be ploughed up.

Atkins contra *Temple*, in 2 *and* 3 *Car.*

Dom. Howard contra *Ridler*, a decree for staying of ploughing up ancient pasture ground, in *Pasche*, 19 *Jac. li. A. fo.* 878.

Ewens contra *May*, *Mich.* 22 *Jac.*

Sheldon contra *Dormer*, *April*, 14 *Jac.*

Tresham contra *Gerrard*, *Hil.* 2 *Car.*

A jointress restrained from ploughing up of ancient pasture grounds.

Packer contra *Dom. Newell*, jointure lands being good lands, and not ploughed within forty years, stayed by injunction, 6 *Car. li. B.*

Gurnard contra *Dom. Eyres*, look into about 8 *Car.* concerning ploughing up of pasture, of what nature.

Walrond

Walrond contra *Gold*, 12 *Car*.

Rolls contra *Miller*, and to shew cause why should not lay down that was ploughed, in *Mich.* 15 *Car*.

Sill contra *Mole*, a restraint from ploughing of land worth five shillings an acre, being ancient warren, though dispunishable here, about 6 *Car*.

PARCEL.

113. Parcel or not parcel determined here.

Egerton contra *Egerton*, by the opinion of the Judges, parcel or no parcel determinable here, where the bill is not simple parcel.

Tattersall contra *Dalton*, upon turning of water lying in two counties, about 11 *Car*.

Hobby contra *Bonby*, though parcel or not parcel fit for law, yet no news to settle things according to proof, and a commission awarded accordingly, *Pasche*, 2 or 3 *Car*.

Hetley contra *Com. Suff.* parcel or not parcel overruled upon the demurrer, and decree in *Pasche*, 12 *Car*. Mr. *Page*'s report.

PANNAGE.

114. Pannage.

Pannage was dismissed, the lessor felled the trees; that felling in equity is to be stayed so far, as the pannage may not be taken

taken away, 1593. Lord *Marquess* contra *Corham*, 35 *Eliz.*

PLAINTIFF.

115. Plaintiff may examine and have publication within fourteen days after return of the *certiorari.*

My Lord's order and opinion, the plaintiff may examine, and have publication within fourteen days after the return of the *certiorari* to pray the surmises, and give the Court jurisdiction, but the defendant is not to examine or publish any to disprove it; and if upon the plaintiff's proofs it be retained, then the plaintiff and defendant may examine orderly touching the body of the cause, and have publication according to the rules, and though the defendant examine as soon as the answer, yet shall not they be published, but in ordinary course, *Checkey and Allen.*

Lambert contra *Lambert*, the plaintiff is to be examined on interrogatories, 12 *and* 13 *Eliz. fo.* 380.

Kent contra *Benham*, to examine the plaintiff at the hearing of the cause, *Pasch.* 6 *Car.*

Drury contra *Drury*, the plaintiff examined as a witness in a cause, and after becomes plaintiff for the interest in that business, allowed and not to be suppressed, about 9 *Car.*

Smith contra *Gabry*. The plaintiff released out of prison [illegible]

other men's suits, because he was arrested when he was going about his business or suit in chancery, 8 *Car.*

Mayor of Bristol contra *Whitson*, the plaintiff examined as a witness, 8 *Car.*

Allen contra *Allen*, in *Trin.* 15 *Car.* the plaintiff relieved for a debt against an heir in tail, and possession, to be established with the plaintiff till the heir in tail recover at law.

PERPETUITY.

116. Perpetuity.

Poole contra *Poole*, the Court doth not allow of perpetuities, nor of statutes to warrant them, *Pasch.* 5 *Jac. li. B. fo.* 619.

Bacon contra *Smith*, 12 *Jac.*

Hunt contra *Bancroft*, 14 *Jac. Hil. and Mich.* 15 *Jac. fo.* 455, *and* 883, *li. B. and Pasche*, 16 *Jac.*

Hooe contra *Arnold and al'*, about 17 *Jac.* the contrary.

POSSIBILITY.

117. Possibility relieved here.

Romney contra *Garnons and al'*, a conveyance made to the defendant to uses, and to their heirs, for want of issue, then to such child or children of *Eliz.* (one of them to whom the use was limited) begotten of her former husband, being the plaintiff's

plaintiff's father, they to whom the use is limited, die without issue, and before their death did grant and devise the lands so in use to the plaintiff. It was thought good, and decreed for the plaintiff, it being but a possibility in them, and contrary to the words of the first intail and grant, being limited to the children, in 37 *Eliz. li. A. fo.* 286 *and* 949.

Povey contra *Barker*, a demurrer, because a possibility cannot be disposed of, overruled, notwithstanding a decree in the Marches, 9 *Car.*

Though possibility cannot by law be disposed of, yet by equity.

Decreed here notwithstanding a decree in the Marches.

POSSESSION.

118. Possession.

Delahay & Pottenden, Mich. 39 *and* 40 *Eliz.* Possession as at time of *subpœna* served.

Rowswell contra *English, Trin.* 16 *Jac.*

Le Stationers London contra *Simcox*, the Court establisheth possession until eviction at law against a patent, *Mich.* 7 *Car.*

Pleydall contra *Prettiman, Mich.* 12 *Car.* no advantage to be taken by unity of possession at law, being point of common, and after a trial, a commission to issue out of Chancery.

Wild contra *Sliford*, the Judge's certificate.

Berd

Berd contra *Dormer*, the Lord Keeper's difference concerning unity of possession when it continued in the abbot's hand, in *Trin.* 15 *Car.*

PLEA.

119. Plea foreign.

Yelverton contra *Burtow*, 1594, to be sworn to it, and to put in a plea not foreign.

PRIVILEGE.

120. Privileged places overruled.

Cases against the Court of Chancery for privileged places, and for the county palatine of *Chester*, overruled.

Hulst contra *Daniel*, *Mich.* or *Hil.* 5 *Car. li. A.*

Dom. Morley contra *Martin*, 25 *Eliz.*

Brereton contra *Donne*, 24 *Eliz.*

Egerton contra *Comitem Darbie*, determined here, yet decreed there, in 11 *Jac.*

Inter Swinnerton quer' contra *Savage*, defendant; it was ordered, that in respect the suit depended there, that the cause should be determined there, in 37 *H.* 8.

Pope contra *Thatcher*, in *Pasche*, 2 *Car.*

Croker contra *Holme*, dismissed in 22 *and* 23 *Eliz. li. A. fo.* 520.

Nevill contra *Nevill*, 26 *Eliz. li. A. fo.* 329, in the duchy, overruled, between *Barnard* and *Langley*, 9 *Car.*

Beare contra *Stockhall*, the matter remitted to be tried at *Oxford*, in 1 *and* 2 *Ph. & Ma.*

Oxford.

Davis

Davis contra *Corpus Christi*, *Mich.* 19 *Jac.*

Huntley contra *Henney*, 4 *Jac. li. B. fo.* 303.

Cotterell contra *Standish*, *Pasche*, or *Trin.* 12 *Jac.* or *Hil. li. B. fo.* 925.

Wingfield contra *Fleetwood*, in 21 *Eliz. li. A.* 137, *li. B.* 138.

Bent contra *Oldfield*, *Pasche*, 1 *Car. li. B. fo.* 1044.

Privileges of Chancery against the Cinque Ports.

Against the Cinque Ports.

Brown contra *Biggs*, about 36 *Eliz.*

Merwithie contra *Johnson*, *Mich.* 44 *Eliz. li. A. fo.* 35.

Hilton contra *Lawson*, 2 *Eliz. li. A. fo.* 199.

Smith contra *Delves*, *Mich.* 2 *Jac. li. A. fo.* 133, *Chester.*

Starkey contra *Starkey*, a report, in *Mich.* or *Hil.* 16 *Jac.*

Langham contra *Beachampe*, the defendant committed because he would not answer, the land lying in the Cinque Ports, 40 *Eliz.*

Fitton contra *Fitton and Wrenhum*, 13 *Car.*

Fenwick contra *Barnard*, *July*, 10 *Car.*

Stannary Court privileged.

Stannary.

Daw contra *Derry*, *Trin.* 23 *Eliz. li. A. fo.* 477.

Trewynard contra *Killigrew*, 4 *and* 5 *Eliz. fo.* 287.

Duchy Court of *Lancaster*.

Hulst contra *Daniel*, *Mich.* 5 *or* 6 *Car.*
contra *Pauperes de Wogston*, the Court will not hold plea against the Duchy Court of *Lancaster*, in 10 *Eliz. li. B. fo.* 853.

Process into Cinque Ports, and touching privileged places, as also into county palatines.

No checquer-man hath privilege against a *subpœna*, *Tuke* contra *Clark*, in 3 *Car.*

Guillielm contra *Welsh*, for a cause between parties where the Queen's interest cometh not in question, *Trin.* 36 *Eliz.*

Cutts contra *Peters*, 23d *April*, 28 *Eliz. li. A. fo.* 403, exchequer-man not priviledged but to answer.

Equivolent is to have privilege, and not every servant, *Putton* contra *Green*, *Trin.* 36 *Eliz.*

Browne contra *Riggs*, a demurrer overruled, about 34 or 35 *Eliz.*

Blackley contra *Laneston*, a *corpus cum causa* to remove the plaintiff out of the Cinque Ports, *Pasche*, 4 *and* 5 *Eliz.*

Langham contra *Beckham*, *Trin.* 40 *Eliz. and* 41, *li. A*, *and* 34, *li. A. and* 40.

Cinque

Cinque Ports privileged against Chancery.

Hudson contra *Taylor*, 41 *Eliz. li. A. fo.* 147, *pro Chancery*.

Shutterton contra *Nevill*, 34 *Eliz. li. B. fo.* 249.

Francklin contra *White*, 41 *Eliz. li. B. fo.* 726.

Cinque Ports overruled.

Harbie contra *Saltonstall*, in 5 *Feb.* 1 *and* 3 *Jac.*

An injunction out of the Exchequer disallowed, and the party which procured it sent for it by a pursuivant, because her Majesty's revenue not in question here, *Hartopp* contra *Hartopp*, in 1594.

Ellords, widow, claimed her privilege because her husband was privileged, and if it were for her husband's act, it was holden clear that she should be privileged, but this was for her own act, and yet *hac vice* privileged.

Lloyd contra *Lloyd*, *Pasche*, 35 *Eliz.* but this is no order to privilege others, in *li. A.*

Barkley contra *Hussey*, the defendant nor allowed his privilege, because his wife joined him, 21st *Nov.* 32 *Eliz.*

Oxford privileged against *Chancery*.

Hopper contra *Eastmond*, 1587, in 33 *Eliz. li. A. fo.* 21.

Onewry contra *Glasier*, *Trin.* 1588.

White

White contra *Howger*, in 17 *and* 18 *Eliz. li. A.*

Overruled between *Horwood* contra *Smith*, in *Mich.* 12 *Jac. li. B. fo.* 308.

Court of Requests, not allowed privilege here, *Garnons* contra *Maddox*, 39 *Eliz.*

County Palatine of Chester.

Any dwelling there, must appear upon the process, and plead their privilege, by the Master of the Rolls' opinion, in *Herenden's* case, in 36 *and* 37 *Eliz.*

Privilege in Chancery.

Chancery privilege.

In what cases the Chancery doth privilege.

The defendant coming to execute a commission was arrested, and had a *corpus cum causa*, and set him at liberty, *Jackson* contra *Vaughan*, *Trin.* 23 *Eliz.*

Fowler contra *Ayhurst*, removed from *Rochester*, in 22 *Eliz. li. B. fo.* 557.

The plaintiff arrested when he came up to examine witnesses, and discharged by *supersedeas* of privilege, *Barnardiston* contra *Bawd*, *Trin.* 1591, or 32 *Eliz. fo.* 738.

A defendant coming up upon an attachment would have had his privilege against a citation in the Arches, and had not, because a citation is no stay of his person, *Cooke* contra *Dix*, *Pasche*, 30 *Eliz.*

Marshall

Marshall contra *Moore*, the plaintiff coming up to follow his suit half a year after his bill exhibited, was arrested in *London*, and had his privilege, 1588.

Hughes contra *Middleton*, in *Hillary* term, and paid costs for the same, 4 *and* 5 *Car.*

Diggs being committed by the Court of Requests for not answering a bill there, for the same matter for which he had a bill here, had a *corpus cum causa*, in 36 *Eliz. li. A. fo.* 539.

Because Master *Bridgeman* served a clerk in Master *Shugborough*'s office, a commandment from to stay here, he was committed to the prison of the Fleet, at the suit of *Carleton*, *Pasche*, 37 *Eliz. A. fo.* 135.

Inter Carleton and Bridgman, with the opinion of the Court, that no Court can hinder the point of equity of this Court.

Binion contra *Thimble*, in *Pasche*, 1632 or 1633, concerning the privilege of the University of *Oxon.*

Morgan contra *Richardson and al'*. the plaintiff having a writ of privilege, was taken in execution, ordered to go abroad by *habeas corpus*, and the party that arrested him to be committed, about *Hil.* 17 or 18 *Jac.*

Johnson contra *Obbin*, the plaintiff delivered out of execution, 12 *and* 13 *Eliz. fo.* 238, *li. A.*

Matheu

Mathew contra *Com. Arundell*, a demurrer, because an Exchequer-man, overruled, 6 *Car. li. B.*

Welbore contra *Collins*, concerning King's College, in *Cambridge*, overruled, 7 *Car.*

Bancks Attorney Dom. Regis by information, where an inquisition was awarded to inquire of *Rooke's* estate in the Cinque Port of *Sandwich*, a writ of seizure awarded, about 11 *Car.*

Pepwell contra *Goldsmiths, London*, an attorney at law joins with another in action, thereby to avoid a privileged man in this Court, the suit stayed, and the privilege allowed, in 28 *Eliz. fo.* 247.

Mostin contra *Thomas*, though the defendant (a clerk in the Court of Requests) because the suit had priority there, demurred in respect of that, and of privilege, overruled, in *Hil.* 14 *Car.*

PARTITION.

121. Partition.

Long contra *Miller, Mich.* 1594. An unequal partition relieved here.

In equity where none by law.

Speke, the plaintiff, had one part, *Walrond*, the defendant, another, and *Morgan*, a ward, another, and *Walrond* overcharged *Speke*, and *Morgan* had his part set out by commission, and no partition could be had against *Walrond*, without making the ward

ward party to the writ, which he could not do during the ward's minority, therefore thought meet the plaintiff should be holpen in equity during the minority, *Hil.* 40 *Eliz.*

Norse contra *Ludlow*, a decree that two partners which have made an unequal division, should be divided into equality, in 32 *Eliz. li. A. fo.* 404.

Broughton contra *Broughton*, *Hil.* 28 *and* 29 *Eliz. B. fo.* 264, whether a partition made without writing, be good or not? quere.

Babb contra *Dudeney*, in *Mich.* 14 *Car.* the Court would not grant a partition, the matter being but nine pounds *per annum.* *Norbury* contra *Yarbury*, otherwise, this is upon a joint-tenancy, in *Mich.* or *Hil.* 14 *Car.*

Windham contra *Weare*, 15 *Car.*

POSSE COMITATUS.

122. *Posse comitatus* awarded.

Sidenham contra *Courtney*, *Posse Comitatus*, awarded to be taken, 41 *Eliz. li. B. fo.* 324.

Harrington contra *Horton and Cox*, about *Mich.* 16 *Jac. li. A. fo.* 9.

PROCESS.

123. Process of record.

All process that go in affirmance of the recognizance, must go into the same country

try where the first *scire facias* goeth, it is not so in these which go in dis-affirmance, *Haselwood and White*, 30 *Eliz.*

No clerks of this Court shall make out process of *subpœna* against any to testify before any officer, unless it be before a Judge, or commissioners warranted and authorized by this Court, to take examinations of witnesses, 11 *and* 12 *Eliz. li. A. fo.* 28.

PERJURY.

124. Perjury punished.

In the judgment roll, 37 *H.* 8, between *Baskervile* and *Guilliams*, set on the pillory for procuring perjury in the Spiritual Court.

And 16 *Eliz. fo.* 17, between *Siderson* and *Eastcourt*.

Bullen contra *Bullen*, 44 *and* 45 *Eliz. li. B. fo.* 170.

Freeborne contra *Leasure*, in *Trin.* 20 *Jac. li. B. fo.*

Perjury to be examined here, *Halse* contra *Browne*, notwithstanding the cause was dismissed, 16 *Eliz. fo.* 401.

Punished upon hearing.

Mound contra *Culme*, forty pounds costs given for perjury, in *Mich.* 14 *Car.*

PROCEEDINGS.

125. Proceedings.

The Court proceeds, because the defendant would not answer or appear, *Michell* contra *Harry*, in *May*, 39 *Eliz. fo.* 775.

PURCHASERS.

PURCHASERS.

126. Purchasers favored.

Vavasor, or *Waserer*, contra *Row*, in 33 *and* 34 *Eliz.* the said plaintiff bought land of one who had no power to sell, and moved, that if the defendant should be compelled to bring in the leases, which might incumber the plaintiff's purchase, then the plaintiff might bring in the ancient evidences which might discover that he which sold to the plaintiff had no power to sell; the Court answered, that no aid should be given to overthrow purchases made *bonâ fide.*

Not charged by any collateral agreement after the sale.

Smith contra *Killigrew and Ognell*, in 34 *and* 35 *Eliz. li. A. fo.* 88. *Ognell* would have charged land purchased by the plaintiff of *Killigrew*, by a former because a collateral, which grew after the plaintiff's purchase, was not performed; it was thought no reason to load the land with heavy agreement, after *Smith* purchased, *Hall* contra *Oflen*, 3 *Jac.*

Favored.

The Court would not stay a purchaser from felling of woods, though the vendor had an estate for life. *Tirringham* contra *Eyres*, 37 *Eliz.* and the Court would not bar him remedy at law, upon any evidence he could produce.

Buying land of feoffees relieved, though a verdict at law against them.

Banister contra *Brooke*, a man possessed of a lease for fifty years, he dying intestate, the

the wife administers, and makes a feoffment to her own use, a little before her marriage with a second husband, the feoffees sell the land for valuable consideration, and was enjoyed many years accordingly; after the wife's death, the second husband would avoid this purchase by reason of the use, the Court decreed that the purchasers should enjoy it, notwithstanding a verdict at law, in *Mich.* 17 *Jac. li. A. fo.* 413.

Relieved against breach of condition.

Swan contra *Rogers*, *Mich.* 9 *Jac. li. A. fo.* 305, the Court relieveth the purchaser against a breach of condition.

Burlace contra *Burrell*, in *Pasch.* 19 *Jac. li. B. fo.* 1244, being a purchaser.

Stonehouse contra *Dell*, the contrary in 10 *Jac. li. B. fo.* 274.

Buller contra *Smith*, in *Trin.* 15 *Car.*

Relieved against an ancient statute.

Comes Pembroke contra *Eyre*, in 17 *Jac. li. B. fo.* 863, a purchaser relieved against an ancient statute.

Stile contra *Michell*, in *Pasch.* 19 *Jac. li. A.*

Dimmock contra *Williams*, in *Mich.* 16 *Jac. li. A. fo.*

Warcroft contra *Dom. Culpepper*, in *Mich.* 15 *Jac. li. B. fo.* 244, relieved against ancient statutes.

Garfield contra *Humble*, in 16 *Jac.*

White contra *Phillips*, in *Trin.* 21 *Jac. li. B. fo.* 768.

Standen

Standen contra *Bullock*, the plaintiff bought several manors of *Thomas Bullock*, deceased, who (before the plaintiff's purchase) had conveyed the same by fine and recovery to the defendant and his heirs males, which being done without consideration, was adjudged and decreed to the plaintiff, in 38 *Eliz. li. A. fo.* 713, and 42 *Eliz. li. B. fo.* 289.

Relieved against a deed of intail.

The like between *Cheek* contra *Beamont*, in *Hil.* 18 *Jac. fo.* 775, and 1165, look for the final order upon the Judge's certificate, lands conveyed when sick, in *Trin.* following.

Hurt contra *Hurt*, *Hil.* 12 *Jac. li. B. fo.* 727.

Helam contra *Colt*, in 9 *Car.*

Boll contra *Hancock*, in *Oct.* 11 *Jac.* a purchaser relieved against a statute.

Lister contra *Harrison*, a purchaser relieved against a statute in 9 *Jac. li. B. fo.* 619, sought to be extended by a second agreement after the purchase.

Relieved against statute upon a second agreement.

Curson contra *Blackall*, the father makes a voluntary conveyance in tail of lands, reserving an estate for life, after sells the woods upon the lands to a stranger, decreed that the vendees of the woods shall have the woods, notwithstanding the conveyance of the lands, 25th *Jan.* 9 *Jac.*

Relieved against a voluntary conveyance.

Chandler

Relieved against a statute for performance of covenants.

Chandler contra *Dawtree*, in 41 *Eliz. li. B. fo.* 480, the opinion of the Court, that a statute for performance of covenants, ought not to take away the possession of a purchaser.

Dom. Burgh contra *Wolfe*, an ancient statute being against a purchaser, though no direct proof on either side, decreed to be cancelled, in 11 *Jac. li. B. fo.* 426.

Having no notice shall not be charged.

Maynard contra *Pauperes de East-Greensted*, a purchaser that comes in without notice of a rent-charge, shall not be chargable therewith, although given to a charitable use, in 6 *Car. li. B.*

Rutter contra *Bartley*, purchasers relieved of a sleeping mortgage, in *Mich.* 2 *Car.*

Comes Bristol contra *Hamond*, the defendant would avoid a lease against a purchaser upon proof that the lease was made by one of *non sane memoriæ* and that point of parcel is determinable at law, the lease decreed, 9 *Car.*

Simeon contra *Greene*, to help a defective deed, and take off incumbrances, as statutes and judgments subject to those lands, being against a purchaser, in *Hil.* 10 *Car.*

Simeon contra *Cheriton*, in *Mich.* 10 *Car. vel Jac.* a statute set on foot nine years after decree to obvert it, stayed.

Mutts contra *Com. Kancie*, a purchaser of

of a lease, out of which a rent is issuing, shall not be liable, but the executor of the will, 31st *Jan.* 9 *Jac.* this rent was without a clause of distress, and the executrix and her trustee sold away the lease.

The like between *Nurton* and *Nurton*, 9 *Jac.*

Thornburgh contra *Grobham*, about 17 *Jac.* a purchaser for a valuable consideration restrained from bringing an *audita querela* upon pretence that a purchaser had levied monies upon other securities.

To prohibit a purchaser to bring *audita querela.*

Walton contra *Lewkner*, a man buys land, knowing of a former agreement, 11th *May*, 12 *Car.*

Yeaveley contra *Yeaveley*, in 14 *Car.* purchasers coming in *pendente lite* bound.

PROCEDENDO.

127. *Procedendo* awarded, because the *certiorari* had a long return.

Because a *certiorari* was made with a long return (skipping a term) a *procedendo* was awarded, *Ashley* contra *Godser*, 36 *H.* 8, *fo.* 30.

PROMISE.

128. A remedy for a promise.

Where the law cannot give a lease, or a thing promised but damage, there is some cause for the Court to compel the party to perform the thing promised, *Browne* contra *North*, *Waller* contra *Salter*, in *Trin.* 8 *Jac. li. A.*

Ferne contra *Bullock*, *Mich.* 9 *Jac. li. A. fo.* 274, the defendant promised to sell the plaintiff land, whereof ten shillings was given him, yet the defendant would not perform, yet he should.

Clarke contra *Hackwell*, in 3 *Jac. li. A. fo.* 596, five pounds paid, decreed.

Long contra *Long*, in 40 *Eliz. li. A. fo.* 360, or 369, the defendant promised and agreed to assure leases in marriage with the plaintiff's daughters, who would not perform it, but ordered.

To assure lands marriage ordered.

A man promiseth to assure lands in consideration of marriage, but after the marriage refuseth, yet ordered, *Gerard's case*, in 2 *Jac. li. A. fo.* 202.

Fox contra *Fox*, in 8 *Jac. li. B. fo.* 248.

Wroughton contra *Stafford*, to leave consideration thirteen thousand pounds at death, *Mich.* 21 *Jac.*

Hale contra *Hicks*, in *Nov.* 38 *Eliz.* a cople.

Otway contra *Hibblethwaite*, upon a promise made by the defendant to pass his lands unto him, was the cause of his marriage, but when the said defendant came to be old, conveyed away the same lands from the plaintiff, contrary to his promise, the plaintiff was relieved for part of the said lands, 13th *July*, 11 *Jac.*

Battersby contra *Prowse*, to pay portions decreed, in *Hil.* 5 *Car.*

Egerton

Egerton contra *Eldred*, the defendant promised to procure a lease of certain lands for the plaintiff, from the contractors, but passed the same to himself, yet ordered and decreed that the same shall be passed to the plaintiff, according to the first agreement, in *Feb.* 8 *Jac.* *June*, 11 *Jac.*

To procure a lease to another, but made to himself, decreed against him.

Plaile contra *Plaile*, the defendant promised to his father to assure certain copyhold lands to the plaintiff, but the father dying before any surrender denied to assure the same, yet decreed he should, 21st *May*, 9 *Jac.*

Perry contra *Peckham*, in *Pasch.* 3 *Car.*

Longman contra *Hopgood*, concerning a promise in marriage, *Hil.* 3 *Car. li. A. fo.* 633, and a sequestration of lands for non-payment of money.

Erby contra *Evans*, concerning a promise or bare agreement, in *Mich.* or *Hil.* 5 *Car.*

Or bare agreement

Bancks contra *Sheriff*, promise left to the law, *Mich.* or *Hil.* 5 *Car.*

Clark contra *Briers*, in *June*, 9 *Jac.* one relieved for a lease for lives upon a promise.

Noble contra *Washborne*, to answer a promise, 5 *Car. li. A. fo.* 461.

Russell contra *Read*, a promise of five hundred pounds to make himself a baronet would not pay it, yet decreed, about 5 or 6 *Car.*

Church

Church contra *Dom. Mordant*, a promise to make a lease in marriage, decreed against a purchaser, in *Trin.* 2 *Car.*

By one witness dismissed to law, but equity relieved.

Stadd contra *Cason*, a single witness could not decree a promise, but referred to law, and then equity reserved, 10 *Car.*

PROOF.

129. Proof supplemental.

Manser contra *Fotherby*, supplemental proof allowed of, about 7 *Car.*

Wagstaffe contra *Foliambe*, the like in *May*, 5 *Car.*

QUARE IMPEDIT.

130. *Quare Impedit.*

Comes Pembroke contra *Bostock*, a bill to discover a patron, whereby to enable one to bring *quare impedit*, ordered, in 2 *Car.*

Peirs contra *Trelawney*, the question being title of advowson, and the incumbent who had one verdict (simony or not simony being the point) decreed the possession upon one verdict, and stayed *quare impedit*, in *Hil.* 15 *Car.*

QUID JURIS CLAMAT.

131.

A fine ingrossed before *quid juris*, the tenants ordered to attorn, *Hinsh* contra *Blaid*, *Blackwell*, and *Eyre*, 36 *Eliz. li. B. fo.*

fo. 10. *Et Roll* contra *Shute*, in 12 *Jac. li. B. fo.* 1375, and 13 *li. A. fo.* 612.

Mancase contra *Clayton, li.* 8 *Jac. fo.* 715, arrearages of rent to be paid.

RECOMPENCE.

132. Recompence for building, and a promise.

Tooker contra *Mayor Exon'*, in *Mich.* 16 *Jac.* it is for a recompence for a building and a promise.

For spoil committed.

Fellow contra *Gibbons*, the defendant got a lease away by craft, and cut down certain woods to a great value, the land could not be recovered, but recompence for the spoil committed thereupon, in *April*, 11 *Jac.*

Recompence for building upon a voidable lease, *antea inter Comes Oxon'* and *Neeth.*

For waste done.

Browne contra *Bridges and Ley*, a decree for recompence of waste done, in 32 *Eliz. li. A. fo.* 836.

RE-EXTENT.

133. Re-extent.

A re-extent awarded *antea, inter Chivers* and *Bampton.*

RECOGNIZANCE.

134. Recognizance not inrolled in twenty years, yet ordered to be inrolled.

A recognizance without condition, not in twenty years inrolled, yet upon affidavit (that he who acknowledged it was living) the Court ordered that it should be inrolled

rolled, about 40 *Eliz. fo.* 195, *inter Rol* and *Roll*, *Et Long* and *Owen*, *eodem termino*, *fo.* 205, *li. A.* 11 *and* 12 *Eliz.*

Horshall contra *Folden*, 6, 5, *vel* 8 *Jac.* a recompence being ancient, and no money proved to be paid, was cancelled.

Bradshaw contra *Kinnersley*, being without defeasance, *Feb.* 10 *Jac.*

Linch contra *Digbie*, concerning a recognizance, in *July*, 7 *Car.*

Mico contra *Drake*, a recognizance to be inrolled, which neglected, by the negligence of the plaintiff, in 11 *Car.*

RECUSANT.

135. Recusant.

Leman contra *Roe*, the power of the statute of 3 *Jac.* concerning a gift of presentation, when a recusant presents, in 7 *Car.* and likewise a sequestration until determined.

RELEASE.

136. Release.

Denton contra *Bolt*, 11 *and* 12 *Eliz. li. A. fo.* 360, the plaintiff became bound in an obligation to the defendant, to deliver to a third person a general release from *Alice Denton* his mother, the bond was not performed, yet relieved here.

By a *feme covert.*

Palmer contra *Reynell*, one thousand pounds bond entered into to feoffees, after (during

(during coverture) releaseth this bond, yet the gift stands good, *Trin.* 14 *Car.*

Horner contra *Barrell*, notwithstanding the defendant pleaded the Statute of Limitation, overruled, 6 *Car. li. B.* and a release of one administrator not to prejudice the other.

Of one administrator shall not prejudice the other.

Wilson contra *Grove*, a release of an estate being not known, relieved against an executor, 7 *Car.*

Of an estate not known relieved.

Priestley contra *Johnson*, the opinion of the Court, how far a release touching children's portions shall bind, in 14 *Car.*

For portions how far shall bind.

RELIEF.

137. Relief in equity where not in law.

Sir *Henry Lea* granted a rent to *Crocker* and his assigns during *Peniston*'s life, *Crocker* died, making no assignment and no occupant without a rent, *Crocker*'s son (to stay the penalty of his father's bond made for payment of the rent) was enforced to pay it, and sought relief in equity against Sir *Henry Lea*. *Crocker* and *Penniston*, *Hil.* 1590.

Judgment and execution had at law, the plaintiff preferred his bill to be relieved, but dismissed and had no relief.

After judgment and execution at law no relief here

Farrington contra *Wolwich*, 12 *Eliz. fo.* 118.

Bolt contra *Reignolds*, the like, 12 *Eliz. fo.* 129.

Brewer

Brewer contra *Temblet*, the plaintiff was relieved of a promise, both for a lease and a personal estate, 13 *and* 14 *Eliz. li. B. fo.* 76.

Grove contra *Preston*, the plaintiff relieved of a promise and agreement, 4 *Jac. li. B. fo.* 54.

Standen contra *Hickman*, in 39 *Eliz. li. B. fo.* 86.

Points contra *Hensley*, 38 *Eliz. li. A. fo.* 279.

Tregonwell contra *Reeves*, relief of general words in a patent against express in another, 41 *Eliz. li. B. fo.* 244.

Huet contra *Hurston*, no relief after judgment, in *Trin.* 17 *Jac. fo.* 909.

Dom. Crompton contra *Bishop*, the plaintiff is relieved against his own act, in *Mich.* 8 *Jac. vel Car.*

Waller contra *Waller*, 16 *Jac.*

Woodward contra *Alport*, in *Hil.* 12 *Jac. fo.* 765, *li. A.* the plaintiff seeketh to be relieved for brokage and wares that were sold by cozenage.

Freeman contra *Hugget*, *Hil.* 16 *Jac.*

An heir disinherited by fine passed, yet relieved.

Lyde alias *Joyner* contra *Lyde*, the father by fine passed disinherited his heir, the Court ordered that the land should be reassured, yet that the plaintiff should not sell the land to any, in case he died without issue, *Mich.* 14 *Jac. fo.* 335, and *Trin.* following, *li. B. fo.* 1388.

The

The like betwixt *Hoskets* contra *Hillier*, *Pasch.* 17 *Jac. li. A. fo.* 1025.

Salisbury contra *Griffith and Owen*, 10 *Jac. li. A. fo.* 491, and 658.

Long contra *Long*, 18 *Jac. li. B. fo.* 1730.

Humphrey contra *Humphrey*, *Pasch.* 21 *Jac.* the contrary.

Harbert contra *Lownes*, *Hil.* 3 *Car.*

No relief if a man have suspended his rent.

Warren contra *Towler*, the Court is of opinion that the plaintiff having suspended his rent, no reason but that the defendant should detain it, by reason of the plaintiff's act, 31 *Eliz. fo.* 312.

Haley contra in 2 *Car.* the contrary.

Gayner contra *Lucas*, the defendant had execution and judgment upon two recognizances and a statute, amounting to three hundred pounds, but in respect it was a sleeping statute, the Court ordered the obligor to be discharged out of execution, and the plaintiff's possession of the lands to be delivered, in 5 *Jac. li. A. fo.* 319.

Charnock contra *Charnock*, the defendant acknowledged a recognizance, which was taken away privately, the plaintiff had relief, either that the said plaintiff shall have his money, or else the recognizance to be inrolled, 22 *Eliz. li. A.*

Of a promise against a deed of purchase.

Tuck contra *Pattison*, the plaintiff relieved upon a promise against a deed of

purchase, there being some practice in the purchaser, in *April*, 11 *Jac.*

Toplace contra *Dickenson*, relief against an occupant, 5 *Car. li. B.* 357.

Against his own deed.

Maneright contra *Roberts*, a man relieved against his own deed, the same being gotten by threats and practice, though the same be vested in an infant, and the purchaser to become bound in recognizance to assure it when, *&c.* in 10 *Jac.*

Jaques contra *Huntley*, if one neglect to inrol his bargain and sale, being his only assurance, and the bargainee bring an *ejectione firme* against him, and hath judgment, the bargainee resorts to Chancery, (if not for land) yet for money paid for it, 13th *July*, 1599.

Deane contra *Deane*, relieved against a release, about *anno* 3 *Car.*

For dower or jointure.

Smith contra *Smith*, 12 *Car.* a woman relieved for dower or jointure, notwithstanding a deed of intail.

Cuddington contra *Hutton*, a simple man drawn to make leases, and to enter into bonds, relieved, in 8 *Jac. fo.* 905.

Against his own release.

Sumner contra *Tilling*, the plaintiff relieved against his own release, being an ignorant person, 12 *Jac. li. A. fo.* 49.

RENT.

138. Chief rent.

Page contra *Clarke*, a chief of ten shillings retained.

Barew

Barew contra *Bancken*, *Mich.* or *Hil.* 39 *Eliz. li. A. fo.* 473.

Drury contra 4 *Jac. li. B. fo.* 632, twelve pence in Court, being former precedents shewed.

Cornwallis contra *Brugton*, in 38 *Eliz.* about *fo.* 199, *li. A.* 44 *Eliz. li. B. fo.* 355.

Taylor contra *Harborne*, three shillings and sixpence, 6 *Jac. li. B. fo.* 117.

Wincombe contra *Presiden' Magdalen' Coll' Trin.* 12 *Jac. li. B. fo.* 1029.

Rent-seck.

Ferrers contra *Newby and al'*, the Court allows seisin to a rent-seck, in 43 *Eliz. li. B. fo.* 736.

Rent-seck decreed.

Brovost contra *Buckett*, in *Feb.* 11 *Jac. li. B. fo.* 538, of twenty shillings *per ann.* decreed.

Man contra *Marker*, omits rent, 1 *Car.*

Ingleby contra *Wade*, contribution of a rent, 3 *Car. li. A. fo.* 108.

Proportioned.

Lloyd contra *Gwynn*, to proportion a rent, in *Hil.* 5 *Car.*

To be paid by the executor.

Sutton contra *Wright*, concerning an annuity or rent-charge to be paid by the executor, lands being not charged, the executor ordered to pay it, *Pasch.* 6 *Car. fo.* 507.

Adjudged mean profits.

Parsons contra *Parsons*, rents of lands adjudged mean profits, in 8 *Car.*

Demised to a charitable use carrieth the land.

Lenner contra *Lennington*, in the county of *Warwick*, a rent demised to a charitable use, carrieth the land, in 8 *Car.*

Neale

Being continued paid, though no proof of endowment, yet decreed.

Neale contra *Lister*, though there can be no proof of an endowment, but because of long possession, and being presentative, decreed to be enjoined, 9 *Car.* a case between *Grimes* and *Smith*, in the Exchequer Chamber, about 39 *Eliz.*

Judge's opinion, a rent paid for a long time (although no assurance could be produced) yet decreed to be paid.

Churchill contra *Brewer*, in *Hil.* 10 *Car.* a rent-charge decreed, though no evidence.

Cæsar contra *Gater*, concerning rents which have been paid, by reason of a long constant payment, decreed, 12 *Car.*

Extinguished of rent relieved.

Halliley contra *Skarret*, relieved against an extinguishment of rent, in *Mich.* 2 *Car.* and *Sheedon* contra *Gibbs*, *Mich.* 2 *Car.*

REPRISE.

139. *Reprise* what things are adjudged *ultra reprise.*

Dom. Strode contra *Corbett*, 2d *June*, 1632, lords rents, reparations, and tithes duties, are payable to the King's Majesty, churchwarden, and all other common and annual charges and duties declared to be *ultra Reprises.*

RESCOUS.

140. *Rescous.*

The attachment must be special, reciting the return of the rescous the same term, *Alchurch* contra *Bold*, 37 *Eliz.*

RESTITUTION.

RESTITUTION.

141. Restitution on after judgment and execution.

After judgment and execution, the defendant ordered to restore twenty and five pounds, *Some* contra *Portell*, 30 *Eliz.*

Moore contra *Taylor*, the like the year before.

Walter contra *Francis*, 4 *Jac. li. B. fo.* 633.

RESOLUTION.

142. Resolutions upon the statute of the poor, *Sur Audita querela.*

Les Resolutions Popham and Anderson super statut. 39 *pauperum.* 41 *Eliz. li. A. fo.* 102.

Opinio de Judges sur Audita querela and opinio de le Court sur ceo, in 31, 32, *and* 33 *Eliz.*

REVOCATION.

143. Concerning a point of revocation when sick.

Eyre contra *Wortley*, concerning a point of revocation, when one is sick and holding up his hands, and certificate thereupon, and a demurrer overruled for matter of legacy.

REVIEW.

144. Review of a decree upon putting in of security.

Cock contra *Hobb*, a review of a decree allowed upon putting in security, *Hil.* 132. *Et Hall* and *Hobb*, *Hil.* 1632.

REVIVORS.

145. Revivors.

Master *Cecill* and the Lady *Rosse*, his wife, joined in a bill against the Earl of

Rutland, for two hundred pounds, arrearages by year to her due, she died before hearing, he after her death exhibited a bill of revivor, and served process to hear judgment, yet upon an objection that the defendant should first havē been called to answer, the hearing was put off, 1591.

No appearance or oath needs to a bill of revivor, 25th *Nov.* 35 *Eliz. Wolverston* contra *Darleston.*

An assignee cannot revive a suit, *Haselwood* contra *Reynolds*, in 23 *and* 24 *Eliz.*

An executor (his testator dying after publication) could not be permitted to exhibit a new bill to make further proofs, but was held to a bill of revivor, *Ferney* contra *Lawne*, 30 *Eliz.*

Windham being widow, had a judicial order for the substance of the matter, and a commission to make proofs, and after she married the defendant, supposed it needed a revivor, and ruled not, 37 *Eliz.*

SALARY.

146. Salary for serving of a cure.

Daie contra *Hampden*, concerning salary for serving of a cure, in *Pasch.* 3 *Car.*

SCIRE FACIAS.

147. *Seire fac'.*

Broughton contra *Vicecom' Bindon*, it was ordered that the plaintiff might take out *scire fac.* against the defendant for not paying

paying of money according to an order, in 12 *and* 13 *Eliz. li. A. fo.* 162.

SCRIVENERS' CASE.

148. Scriveners' case.

Huet contra *De la Fountaine*, 20 *Jac.* one *Glover* having the setting forth of the defendant's money to whom the plaintiff paid the money again at a day, because the money was not paid to the defendant, and the scrivener breaking, the defendant puts the bond in suit, ordered to cancel the bond, in *Hil.* 20 *Jac. li. B. fo.* 464.

White contra *Hall*, the *Scriveners'* case, in 14 *Car.*

Oxenbridge contra *Whittacre and Dixon*, in 14 *Car.*

Comes Ancoram contra *Douglas*, in *Mich.* 15 *Car.*

Middleton contra *Johnson*, in 14 *Car.*

SEQUESTRATION.

149. Sequestration to compel a man to perform an order.

Knightly contra *Graunt*, 25th *Jan.* 31 *Eliz. fo.* 329, the tenants compelled to bring in their rents in the manor of *A.*

Nelson contra *Cooper and Harecourt*, sequestrator, in *May*, 3 *Car. li. B. fo.* 1003, and 986.

Barker contra *Shepheard*, in *Hil.* 4 *Car. li. B. fo.* 120, and 660.

Eyre contra *Wortley*, about 3 *Car.*

Lakes

For personal debt, and laid in irons in the Fleet for not performance.

Lakes contra *Meares*, after the defendant was committed for not performance of a decree, yet the Court ordered that a sequestration should be granted to levy monies of his in other men's hands, 18th *Nov.* 11 *Jac. li. A. fo.* 329, and he committed, because his wife would not bring in bonds after, but the chief order is in *May*, 10 *Jac. li. A. fo.* 353.

Lupton contra *Harmon*, concerning a sequestration, in *pasche*, *Trin.* and *Mich.* 16 *Jac.*

Maddox contra *Prast*, in *Pasche*, 5 *Car.* *Ancher* and *Frith*, 16 *Jac. eodem.*

Upon personal debts.

Roane contra *Stepney*, in *Mich.* 17 *Jac. li. B. fo.* 171, or *Pasche* or *Trin. Anno* 18. Sequestration.

Copeland contra *Mudd*, a sequestration granted of certain lands, for debts only, in 13 *Jac. li. B. fo.* 502, or thereabouts. *Et Mich.* 14 *Jac. li. B. fo.* 309.

Goslet contra upon an extent, in 10 *Jac. li. A. fo.* 54.

Mullins contra *Bawden*, 13 *Jac. li. A.* sequestration for money, both or copyhold and freehold, *fo.* 105.

Prentice contra *Roupe*, in *Trin.* 17 *Jac. li. A. fo.* 1302, sequestration for money decreed; and another between *Frith* and *Trion*, or *Ancher* and *Frith*, in *Jan.* 16 *Jac. li. A. fo.* 428, and 397.

Whrareby contra *St. John*, the Court was

was inclined to grant a sequestration for money, from *Hil.* 37 *Eliz.* to *Trin.* 38 *Eliz. li. B.*

Cottle contra *Brooke*, in *Pasche*, 18 *Jac. li. B. fo.* 1111.

Middleton contra *Fawcet*, money grew due for tithes, in *Mich.* 1 *Car.*

Eardley contra *Eltonhead*, a sequestration for a marriage portion in 8 *Car.* the decree was 15 or 17 *Jac.*

Awarded for a marriage portion.

SOLICITOR.

150. Solicitor or promoter not examined as a witness.

Wilson contra *Grove*, in *Trin.* 6 *Car. li. B. fo.* 626, a solicitor or promoter not to be examined as a witness.

Waserer contra *Key*, 36 *Eliz.* the solicitor of the defendant ordered to serve a process upon his client, because the plaintiff could not find him.

STANNARIES.

151. Stannaries.

Davie contra *Michell* the stannaries overruled here in 25 *Eliz. li. B. fo.* 65.

STATUTE.

152. Statute extended upon a bankrupt's lands.

Overman contra *Wright*, *Hil.* 17 *Jac. li. B. fo.* 807, a statute extended upon a bankrupt's lands before the *liberate* filed, ordered to bring or stay the statute, and likewise

likewise ordered to take the like composition as other creditors.

Mathew contra *West and others*, in 37 *Eliz. li. A. fo.* 655, one *Knight* acknowledged a statute to the defendant and another, not to alien or waste his land, and afterwards leased it to the plaintiff, the statute being acknowledged in consideration of marriage, and now by reason of the lease so made, the defendant being the survivor conuzee, extends the statute, yet ordered in respect the lease is no waste, the conuzee not to receive any benefit by the said statute.

Boswell contra *Weddall*, the defendant ordered to answer, notwithstanding a demurrer put in upon the statute of 21 *Jac.* the debt being demanded, being without specialty.

Extended.

Clethero contra *Beckingham*, the plaintiffs relieved against a statute, and ordered to have the possession thereof, because the extender had received his debt according to the yearly value, *Pasche*, 21 *Jac. li. B. fo.* 951.

Extended at a low rate, ordered the plaintiff to have them at the same rate.

Griffin contra *Vellers and Leeson*, lands were extended upon a statute for payment of money, the plaintiff had those lands by order at the same rate the lands were extended for payment of the defendant, in 41 *Eliz. li. A. fo.* 229.

Langham contra *Whetcombe*, 6 *Car. li.*

li. B. a demurrer upon the Statute of Limitation maintained.

Lanymare contra *Thorpe*, in *Mich.* 15 *Car.* Statute of Limitation pleaded and allowed, but upon no trust.

Of limitation allowed upon some reasons.

Brinker contra *Kington*, the Lady *Lewes' case*, 6 *Car.*

Woolhouse contra *Barnes and Bullock*, pleads the statute after a judgment at law, not allowed, and it was for assets, 6 *Car.*

Ancient statutes against a purchaser cancelled, *Smith* contra *Rosewell*, *Mich.* 2 *Car.*

Mountjoy contra *Wakeman*, the Statute of Limitation overruled, in 8 *Car.*

Reston contra *Reston*, 9 *Car.* the like.

Harris contra *Baynin*g, 8 *Jac. li. A. fo.* 910, a statute extended at a low value, of purpose to keep off other extents, the Court orders, that the filing of the extent be stayed.

Barnes contra *Trosse*, if he can prove continual claim of reckonings although the pleading of the Statute of Limitations, overruled, in 14 *Car.*

Of limitations *hac fari.*

Sutton's Hospital contra *Com' Suff.* 1000*l.* in demand, the defendant pleads two releases, and no point of limitation, and no demand in due time, and now fallen upon an heir, and concerning a special trust, how far some shall be bound? in *Trin.* 6 *Car.* referred to judges.

Harrison

Harrison contra *Bludder*, a great case concerning the Statute of Limitation of actions, in *Mich.* 15 *Car.*

STEWARD.

153. Steward cannot make a letter of attorney to take a surrender.

Walron contra *Corham*, 15th *June*, 11 *Jac.* a steward of a Court, cannot make a letter of attorney to a man to take a surrender.

SUIT.

154. Suit for equal payment of money.

Clarke contra *Hunlock*, a suit to compel the defendant to join in equal payment of money given by decree, in *Trin.* 2 *Car.*

Homadge contra *Farley*, 38 *Eliz. li. A. fo.* 413, suits prosecuted upon false imprisonment stayed by injunction.

SUPERINDUCTION.

155. *Superinduction.*

Newton contra *Price*, concerning superinduction, *Pasche*, 17 *Jac. li. A. fo.* 961.

Pistle contra *Hardie*, the like in *Mich.* 15 *Jac. li. B. fo.* 358, and *Pasche*, 17 *Jac. li. B. fo.* 817.

Middleton contra *Lort*, in *Mich.* 15 *Jac.*

Wilson contra *Thornton*, in *Mich.* 20 *Jac. li. B. fo.* 081.

Stephens contra *Potter*, in 2 *vel* 3 *Car.*

Maddox contra *Prust*, *Pasche*, 5 *Car.*

Weston contra *Sumner*, demurrer because

cause it concerns a superinduction overruled, in 7 *Car.*

Maddox contra *Prust*, 7 *Car.* concerning a sequestration upon a superinduction.

SURRENDER.

156. Surrender by an infant not good.

Hughs contra *Carpenter*, *Mich.* 9 *Jac.* the plaintiff's brother being within age, surrendered a copyhold to the use of the defendant, held not good.

SURETIES.

157. Surety.

A surety relieved here where a bond is contained in use without his privity, he thinking the same to be paid. As *Saunders* contra *Smith and Churchill*, about 10 *Car. li. A. fo.* 664.

Bullock contra *Pope*, *Mich.* 11 *Car.*

Fotherby contra *Hutchins*, in 2 *Car.*

Wilson contra *Dunstar*, in *Mich.* 15 *Jac. li. B. fo.* 565, *and* 647.

Hollis contra *Deane*, in *Hil.* 13 *Jac. li. A. fo.* 606.

Johnson contra *Pudicot and al'*, one became bound with sureties, and afterwards bankrupt, the creditors sued the sureties, because they were remediless as against the bankrupt, yet ordered not to take any advantage, in *Mich.* 10 *Jac. li. A. fo.* 65, or 165.

Bourne contra *Ironmonger*, in *Mich.* 17 *Jac.*

Little alias *Brooke* contra *Good and al'* in *Trin.* 16 *Jac.* to the contrary of the aforesaid note, *li. B. fo.* 1584.

Relieved which continued without their consent.

Saunders contra *Churchill and Smith*, 10 *and* 11 *Jac. li. A. fo.* 664, *and* 728, the plaintiff being bound with the said *Churchill*'s father for payment of money at a day which the plaintiff supposed the money had been paid accordingly, the money was not paid, the said *Churchill* the father dies three years after, upon whose death the obligee puts the bond in suit against the plaintiff, but in respect the bond was continued without the plaintiff's privity, and *Churchill*'s son having a good estate from his father, was ordered, and the feoffees to whom the son had conveyed those lands in trust, was ordered to sell those lands for payment of the said *Churchill*'s debts.

Higham contra *Longcastle*, assigning a bond for a surety, the surety relieved, in 4 *Car.*

Moile contra *Dom. Roberts*, the heir of a surety where the bonds are continued without the privity of the surety, relieved, in *Mich.* or *Hil.* 5 *Car.*

Hare contra *Michell*, a surety relieved where the bond is continued twelve years, without the plaintiff's privity, in 12 *Jac. fo.* 81.

SURVIVOR.

SURVIVOR.

158. Survivor.

Saunders contra *Thompson*, 7 *Car.* a personal estate equally divided betwixt two, whether the survivor shall have all or not.

SUSPENSION.

159. Suspension.

Cæsar contra *Feild*, concerning *Feild*'s relief against the suspension, *Trin.* 4 *Car.*

TENANT.

160. Tenant for years not to attorn, &c.

Windham contra *Saunders*, tenant for years not to attorn to him in remainder, without producing precedents to that purpose, 11 *and* 12 *Eliz. li. A. fo.* 28.

In tail sold land under value, the vendee ordered to pay more.

Wilson contra *Smith*, in 8 *Car. li. B. fo.* 123, the plaintiff's father seised of lands in tail, sold the said lands for small or no consideration, and suffered a common recovery of those lands, whereby the sale was good in law, yet holpen in equity; for the plaintiff being daughter and heir, the nacity of those lands were sold, yet the *vendee* ordered to pay a better consideration.

Tenants of the manor, not parties to a decree, ought not to be bound, *Seamor* contra *Beare*, in 9 *Jac. li. B.*

Shute contra *Mallorie*, tenant for years ordered to attorn, 5 *Jac. li. B. fo.* 205.

Bowen

Bowen contra *Wrilow*, 40 *Eliz. li. A. fo.* 11.

Jackson contra *Barrow*, *Hil.* 1 *Car.* upon a statute, and arrearages to be paid ever since the attornment.

Man contra *Morley*, *Trin.* 4 or 5 *Car.*

Dannet contra , in 11 *Car.* or thereabouts.

The Court compels tenants for years to set down in certain, the time of the making commencement, determination, and what rents are reserved, and the times the same are payable, to the end the same may be liable to an extent upon a statute.

Buck contra *Lupton*, in 30 *Eliz. li. A. fo.* 511.

Dom. Corbet contra *Sellenger*, the defendant holds over his term, the Court compels him to confess a lease notwithstanding, whereby the plaintiff may ground an action, *Mich.* 6. *Car. li. A.*

Intail being an infant ordered to pay money, &c.

Pearce contra *Pearce*, intailed lands sold instead of freehold lands, the infant when he comes to age, shall pay the money which hath been paid according to the father's will, or else the plaintiff shall have the fee-simple lands, 8 *Jac. li. A. fo.* 1007.

For life his estate forfeited relieved.

Stafford contra *Stafford*, 10 *Car.* Tenant for life the remainder, over tenant for life, because he admits of a recovery to be suffered, forfeited his estate, relieved here.

TESTATOR.

TESTATOR.

161. Testator.

Samborne contra *Samborne*, the plaintiff's father being seised of lands in fee, devised by a nuncupative will of 300*l.* to be paid to raise portions, some two hours before his death, but in respect his father had disinherited him of some other lands, the Court decreed that the lands should be freed from the portions, in 13 *Jac. li. A. fo.* 195.

TITHES.

162. Tithes.

Moone contra *Bond*, 34 *Eliz. li. A. fo.* 621. My Lord declares that matters for tithes are determinable in this Court.

Windham contra *Norris*, a demurrer because the matter concerneth tithes overruled and ordered, in 17 *Eliz. ii. A. fo.* 282.

Underhill contra *Joyner*, concerning tithes in kind, and the parson having common for beasts in the field, was ordered to take a quantity of ground in lieu thereof, and concerning an act of parliament, in *Mich.* 18 *Jac.* Decreed upon a report.

Hungate contra *Crooke*, the plaintiff being a common person, having a lease of tithe in kind, which hath long time been obscured by union, or otherwise, ordered that a commission should go forth for setting out meadow and other grounds in lieu

 thereof,

thereof, in 12 *Jac. li. B. fo.* 748, and 104. Look in *Hil. li. B.* 11 *Jac. fo.* 1202.

Decanus et Capit' Ecclesiæ Christi, in *Oxon'* contra *Grant*, point of tithes determinable in this Court, and parcel or not parcel, in *June*, 11 *Jac.*

Browne contra *Whetford*, *à Modus decimandi* dismissed, otherwise performed.

Qarles contra *Bent*, in 8 *Car.*

Custos new Coll' contra *Sumpner*, in *Pasch.* 10 *Car.* for tithes in kind, the *Bishop of Exeter*'s case.

Custos new College contra *Astley*, concerning rates, tithes, and tithes in kind, *Hil.* 11 *Car.*

Southby contra *Moore*, every one must pay their tithes in kind, unless there be a composition real, or good prescription, *modo decimandi*, 10 *Jac.*

Shires contra *Burgoine*, a decree for tithe conies, and tithe wood, in 12 *Car.*

TRIAL.

163. Trial. *Merefield* contra *Merefield*, the Court directs a special trial, about 11 *Car.*

TRUST.

164. Trust. A conveyance absolute in words, and yet there is a bruit of a trust, but doubtful, whether there be a trust or not, and on the hearing the bruit bought the land, yet

yet shall not be concluded by such a bruit, as Sir *Thomas Egerton* said, *Cornwallis*'s case, 37 *and* 38 *Eliz.* and it is not like the use at common law, neither is the buyer to believe one which would not have him to buy it, if he tell him there is a trnst.

A suit is depending for a trust, and after upon hearing the trust is proved, then that is a sufficient notice of trust to any man which buyeth it, (hanging the suit) my Lord said, in *Diggs* and *Boys*, 16th *May*, *Pasche*, 40 *Eliz.*

Parramor contra *Zouch*, concerning notice of trust and purchasers, 9, 10, *and* 11 *Jac.* and between *Peacock* and *Reynell*, or *e con'.* in *June*, 17 *Jac.* the decree was *Mich.* 19 *Jac.*

Pitts contra *Edelph*, if a man coming under one that had notice of trust (though he had none) shall be bound, and to examine witnesses after a hearing upon point of fact, 7 *Car.*

Farley contra *Warmestrey*, in 23 *Car.* Cestuique trust for wife makes a lease not good, but if she accept rent, good.

Vanlore contra *Lidall*, or *e con'*, look into it, how to remove a trust made for use of children, a leading case, in 2 *Car.*

The way to remove a trust.

TRUSTEES.

165. Trustees shall not be examined one against the other.

Sherborne contra *Foster and Towneley*, trustees

trustees shall not be examined as witnesses one against the other, 7 *Car.*

May sue in his own name.

Windsor contra *Sneath*, a trustee may sue in his own name, in 10 *Car.*

To put in security.

Mansell contra *Aubery*, a trustee to put in security for money and damages, in *Pasche*, 7 *Car.*

Springet contra *Springet*, *Browne's* case 7 *Car.*

TITLE.

166. Title.

Hunt contra *Youngman and Clarke*, the Court relieved the plaintiff against a title of occupancy, in *Mich. and Hil.* 17 *Jac. li. A. fo.* 371, and 874.

Ewer contra *Ewer*, about 2 or 3 *Jac.*

Reeve contra *Alcock*, 3 *Jac. li. A. fo.* 201.

Dux Buck contra *Paul*, 5 *Car.*

Tovy contra *Bristow*, in the Court of Wards, *Pasche*, 11 *Car.*

Hall contra *Ingram*, in the Court of Wards, upon the intent of a will, about 2 *Car.*

UNION.

167. Union no advantage to be taken.

Rawley contra *Yaxley*, concerning an union, or not, in 7 *Car.*

Hartley contra *Deynall*, *Nov.* 37 *Eliz.*

Custos new College contra *Goslet*, no advantage to be taken upon unity of possession, 6 *Car.* and enjoyning of commons, such as for the most part of twenty years.

USE.

USE.

168.

Sambach contra *Dalston*, because one use cannot be raised out of another, yet ordered, and the defendant ordered to pass according to the intent, 9 *Car.* Use, one cannot be raised out of another.

WASTE.

169.

Waste done by one which held by covenant, therefore not punishable by law, yet holpen here. *Songhurst* contra *Dixy*, 221. Waste.

WILL.

170.

Thimblethorp contra *Thimblethorp*, the question being only a will or no will, determined in this Court, in *Mich.* 20 *Jac. li. A. fo.* 222. Will or no will determined in Court.

Pawlet contra *Carey*, in *Pasch. primo Car.* the contrary.

Peacock contra *Glascock*, an averment of a will not good by law, yet good in equity, and the intent of a will allowed, 6 *Car. li. B.* An averment of a will good in equity.

Cage contra *Pearse*, will or no will, referred to law, 10 *Jac. li. B.*

Moggeridge contra *Wither*, an estate in land devised by will in writing, after made a verbal will to revoke that, which is not revocation, 13 *Car.* Writing not to be revoked by a verbal.

Sidenham contra *Courtney*, the lands to pass

pass according to the intent of the will, 41 *Eliz. li. B. fo.* 236.

WITNESSES.

171. Witnesses examined before answer.

Comes Suff. contra *Harris*, examination of witnesses before answer, in 12 *Jac. li. B. fo.* 951.

Stratford contra *Conaway*, in 9 *Jac. li. B. fo.* 1058.

Bagnall contra *Green*, 2 *Eliz.*

Hunt contra *Goodwin*, 9 *Car.*

Dom. Morrison contra *Wethired*, witnesses in the Court of Wards and Exchequer Chamber to be used in this Court, in 10 *Jac. li. B. fo.* 334.

Examined after commission taken away.

Witnesses examined on the defendant's part, after the plaintiff's commissioners were gone away with the commission, *Trevor and Treveman*, in 1594.

Examined in Star Chamber after publication here, and not allowed.

A prescription of common examined here and publication, and after witnesses examined in Star Chamber, to prove assents to inclosures, and not thought fit to be read here. *Tenants of Petworth*, and *Earl of Northumberland*, 1594.

Leave to amend his deposition.

Tadlow being examined as a witness, calling himself better to mind afterwards, was suffered to amend his former examinations, and was further examined *ad informandum*, *Trin.* 27 *Eliz.*

The defendant examined after plaintiff left

left to his proofs, *Meretvither* contra *Fulmer*, 37 *and* 38 *Eliz.*

A witness once examined shall not be called up to be examined upon further point, Lord *Scroope*, Sir *Thomas Egerton*.

Long contra *Long*, contrary, about *Hil.* 17 *Jac.* but *Anguish* contra *Trevor*, not admitted, in *Mich.* 19 *Jac.*

Long contra *Long*, after interrogatories preferred in the country by the defendant, he may examine other witnesses, either in Court or by commission, about *Hil.* 7 *Jac.*

Welby contra *Welby*, in 36 *Eliz. li. A. fo.* 404.

Cupid contra *Quaintron*, *Pasche*, 12 *Jac. li. B.*

Hungate contra *Crooke*, witnesses examined in the country, if the other side have seen the interrogatories not to be examined here in Court, *Trin.* 11 *Jac.*

Viva voce at hearing.

A witness to be examined *viva voce*, at the hearing, *Wright* contra *Moore*, 6 *Car.*

Comes Pembroke contra *Hacket*, *Trin.* 8 *Car.*

Examined before answer.

Knivet contra *Webb*, to examine witnesses before answer, *Mich.* 8 *Car.*

To examine at hearing.

To examine witnesses upon oath for proof of acquittances, payments, and other disbursements upon hearing, *Comes Kancie* contra *Gore*, in *Pasche*, 6 *Car.*

Clotworthie contra *Leech*, *June*, 10 *Car.*

Sheffield

Sheffield contra *Lipton*, *May*, 43 *Eliz.*

Rotherom contra in *Hil.* or *Mich.* 9 *Jac.*

Examined after publication.

Swan contra *Turbervile*, in *Trin.* 5 *Car.* witnesses examined after publication, because the defendants out, if publication or rule shall stand.

Examined after hearing and *informand.*

Dalby contra *Mace*, witnesses after hearing examined *ad informand. conscientism judicis*, *Feb.* 3 *Jac.*

Examined in perpetual memory.

Thynn contra *Rawlinson*, to examine witnesses in perpetual memory, 5 *Car.*

Examined before answered.

Hancorne contra *Emery*, after publication examined witnesses, *Mich.* 3 *Car.*

Molesworth contra *Oppie*, witnesses examined before answer, 8 *Car.*

Examined after publication.

Weeks contra *Thelwall*, witnesses examined after publication allowed, in 9 *Car.*

Examined upon exceptions, &c.

Henshaw contra *Wright*, to examine witnesses upon exceptions put into the commissioners, upon the statute of Charitable Uses, *Trin.* 9 *Car.*

Examined after a commission to counterprove.

Tailor contra *Tailor*, witnesses examined upon new interrogatories after a commission to counterprove a man's testimony at law, upon which a verdict passed, 9 *Car.*

After hearing re-examined.

Dux Lenox contra *Dom. Clifton*, witnesses after a hearing re-examined to clear the matter by the advice of the Lord Chief Justice, and the Lord Chief Baron, in 8 *Jac. li. A. fo.* 381.

Leech

Leech contra *Manners*, to examine witnesses, who owes the soil of a manor, in *Trin.* 6 *Car.*

Veizey contra *Veizey*, examination of witnesses after a hearing, to prove a Court roll, in *Mich.* 14. *Car.* Examined after hearing.

Pindar contra *Bateman*, whether it be in the power of the party to examine witnesses in Court, or by commission, will consider of precedents in *April*, about 6 or 7 *Car.* look the reason. Whether to be examined in Court, or by commission.

Watkins contra *Fursland*, one examined in the Admiralty Court, used here at the hearing, 16 *Eliz. li. A. fo.* 530. Examined in the Admiralty used here.

WRITINGS.

172.

Ward contra *Scrimpshaw*, writings under the plaintiff's clerk's hand, ordered to be recorded, 8 *Car.* Writings.

FINIS.

THE

PROCEEDINGS

OF

The High Court of Chancery.

NOTWITHSTANDING the practice here before this time hath been, that no *subpœna* should be sued forth of the Court of *Chancery*, without a bill of complaint first exhibited: yet of late, for the ease of all suitors and subjects, it hath been thought good that every man may have a *subpœna* out of the same Court, without any bill first exhibited.

And this is called a *subpœna ad respondendum*.

This *subpœna* is the leading process of this Court, by which the party defendant against whom the complaint is intended, is summoned and required to appear and make answer to the complainant, under a certain pain, and at a certain day to come. [2]

The

The days of return here are the usual returns, as in the ordinary almanack; or else a *subpœna* may be returnable at a certain day after any the said usual returns, or the great feast days, from whence the returns take their denomination; so that you must add (*prox'*) in place where cause shall require.

As, if the feast day be to come, then it must be *prox. futur. in unum mensem.*

But if the feast day be past, then it must be *die Paschæ unum menseum prox. futur.*

And the like to other returns, before or after other feast days.

Where, note what time you have for exhibiting of your bill after the day of return prefixed in your writ of *subpœna*: if it be returnable upon a general return-
[3] day, as *Crastin'*, *Octabis*, *Tres*, *Mens*, &c. after such a feast, then you have time to put in your bill until the second day before noon next following, the fourth day following every of the said returns; and you must account the return day, and the fourth day after it, for two of the said four days.

But if the *subpœna* be returnable on such a certain day of the month, then your bill must be put in the second day after it before dinner.

And howsoever the *subpœna* be return-
able,

able, if it be but served on the same day whereon it is returnable, before noon, and the rising of the Court of *Chancery*, it is a good serving, and binds the defendant so served to an appearance with all convenient speed.

If a *subpœna* be returnable on a day certain, as on any day of the month, the bill not being in, the defendant's attorney may prefer costs the next day after; and if the bill come not in the next day after costs so preferred before noon or presently after dinner, the defendant is discharged with such costs as a master of the Court taxes him.

And so in the like case for a *subpœna* that is returnable on a return day, the next day after the fourth day is cost day, and if the bill come not in the next day at noon or presently after dinner, the defendant, having preferred his costs the day before, is discharged from attendance, with his costs. [4]

When the defendant hath so got costs, he may have a *subpœna* whereby to command the complainant presently, upon the sight thereof, to pay the defendant or the bringer thereof, the said costs, (as aforesaid:) which *subpœna* must be served on the plaintiff personally. And if the complainant do refuse to pay the said costs accordingly, then the defendant

 may,

may, upon affidavit made that the *subpœna* for costs were served, have an attachment directed to the sheriff of the county, to attach the complainant therefore.

And upon return made by the sheriff that the complainant cannot be found, an attachment with proclamation may be sued forth against the complainant.

And that proclamation being likewise returned by the sheriff (as aforesaid) then
[5] a commission of rebellion may be sued forth against the complainant.

But on the contrary, if the complainant do put in his bill, and the defendant appeareth not the next day after costs day (which costs day is usually the next day after the four days upon a return is out, or if the *subpœna* be returnable on a day certain, then the next day after his costs day) then the complainant upon oath made that the defendant was served with a *subpœna*, may have an attachment, and further process upon the sheriff's returns of *non est inventus*.

Where note, that the party which maketh oath that he served the *subpœna*: or that the *subpœna* was served, must swear as followeth:

That he delivered the *subpœna* to the defendant.

Or he shewed the *subpœna* to the defendant

ant under the seal of the Court, and delivered to him a note of the day of his appearance, or a label of the *subpœna*.

Or he left the *subpœna* at the defendant's dwelling-house or lodging, where the defendant most abideth.

Or he must swear that he heard the defendant confess that he was served with a [6] *subpœna*.

Or he must swear that he saw another serve the defendant with a *subpœna*.

Note, that if the party served with any such *subpœna* do wrong or abuse the party who served it for the serving thereof, or useth any words of contempt, or slighting of his Majesty's said writ; upon oath made thereof, and motion thereupon, he is punishable for the same, by imprisonment in the Fleet, or otherwise, at the Lord Keeper's discretion.

And if the defendant do appear within the time limited, then the complainant's attorney may give unto the defendant's attorney, on the said day after the costs day, a rule, that the defendant do make answer to the complainant's bill, by the same day seven-night then next to come. This rule and day given, must be entered into the register.

And if the defendant do not answer by the prefixed day so entered; or if he do not otherwise satisfy the Court by sufficient cause

cause and occasion of the delay, then the complainant's attorney may take forth an attachment against the defendant.

[7] *The causes whereby the defendant may satisfy the Court of the delay in answer, are these, for the most part, of which the defendant must take oath:* (viz.)

He cannot make direct answer, without sight of his evidences or writings which are in the country.

Or he cannot answer without conference had first with some person named in the said bill.

Or with some person whom the matter toucheth.

Or if the bill be against the defendant, to express what goods he hath of the plaintiff's, he may make oath he cannot make perfect answer to the plaintiff's bill without sight and perusal of the said goods, which are in the country: and that place in the country, where those goods or writings, or parties live, must be above twenty miles from London, or else he must answer within eight days after his appearance, unless he get further time by order: and if he do make such oath, then his answer is spared till the first day of the next term following.

Or

Or that the defendant is not able to travel without danger of his life, &c. [8]

This oath be made by the solicitor, or some other for the defendant.

And if upon such oath made, the plaintiff refuse to allow the defendant a *Dedimus potestatem* for taking his answer in the country, the Court upon motion or petition will order it; which order is to be entered in the register, and the affidavit filed in the affidavit office.

In case the defendant do not appear, or having appeared doth not answer in his time limited, nor sheweth any of the aforesaid reasons in excuse, then an attachment is awarded against him, which must be entered both in the house-book in the Six Clerks' Office, and in the register, expressing the cause of the issuing of the said attachment.

But if no day be given to the defendant to answer, then the defendant hath liberty to answer at any time during the term.

And if he do it not within that time, then an attachment may be sued forth against him of course: and the same, with the cause thereof, must be entered into the register: (*viz.*) that the defendant appeared, and departed without answer.

If the *subpœna* be returnable so near the end of the term, that there cannot be a day given to the defendant to answer, he must at his peril answer by the [9]

same

same day seven-night following the day of his appearance, although it be in the vacation: for the Chancery is always open, it is *officina semper aperta*.

If the *subpœna* be returnable on the last return day of the term itself, then the defendant is at liberty to appear the first return of the term following.

But if it be a day certain, although the same be the last day of the term, yet the defendant must appear, and answer by that day seven-night next following the said appearance.

Note, there are no such *subpœnas* to answer returnable immediately in term time.

And if the defendant make oath that he cannot answer without writings, &c. or conference with some other person: or if he have a *Dedimus potestatem*, and commission to make his answer, he must at his peril procure his answer to be put in before the day after the first costs day of the next term following, unless it be Trinity term; and then, and in such case, it must be put in the second day after the second return, else the complainant's attorney may, upon such default, make an attachment against the defendant, and enter the same into the register, for that he hath not answered by the day prefixed.

Or

Or in other case, that he appeared and departed without answer; or otherwise that he did not return the *Dedimus potestatem* at the day prefixed, &c. and as the cause shall require.

If a defendant living in the country, having a *Dedimus potestatem* granted him for the taking of his answer to the plaintiff's bill, or his counsel find there is cause of plea or demurrer, upon a motion or petition, he may have a special *Dedimus potestatem* by order to answer, plead, or demur; but the commissioners upon an ordinary *Dedimus* have no power to take any thing but an answer; and if a demurrer be put in without commission, the party must put the same into the Six Clerks' Office in his own person; and if the demurrer or plea be not put into the paper of pleas and demurrers in the register appointed for that purpose, within [11] eight days after the same is put in Court, to the end the same be argued before the Lord Keeper, as it shall fall in course after others; then the said plea and demurrer is overruled of course, and the plaintiff may take forth a *subpœna* against the defendant to make a better answer, and another for costs, according to the Lord Keeper's late orders.

This was wont to be the course, but my Lord Keeper of late hath declared, that if

a

a bill have cause of demurrer he will not a bad bill good.

In case a man be served with a *subpœna* wherein his wife is named, he being in London, and his wife in the country or elsewhere, if he appear not for her, or she answer not as well as he, an attachment is granted against them both, though he appear and answer for himself.

If she do not appear, then the attachment is against him and her for her not appearance.

If she do not answer, then against him and her for her not answering.

[12] If a complainant die depending the suit, his heir, executor, or administrator, who hath the interest in the thing complained for, may put in a bill of revivor against the defendant: or if the defendant die, the plaintiff may put in a bill of revivor against his heir, executor, or administrator.

Also it is to be remembered, that if the complainant exhibit his bill against a man and his wife, for matter which wholly concerneth the wife, whereunto they make answer, and after answer made, the man dieth; the complainant cannot proceed in that suit against the woman without a bill of revivor, because the woman shall not be constrained to stand to that answer, which she, together with her husband, or solely (as

(as wife unto the man) made to the complainant, for that she was then under coverture.

And after her husband's death (she being seised or possessed of the thing in controversy as in her former estate) may (if she please) make a new answer, and shall never be bound or concluded by the answer which she made in her husband's life-time, for that she was then under coverture. And yet (if she so please) she may stand to that former answer of her's, and proceed in that suit accordingly.

But if the complainant exhibit a bill [13] against a feme sole, whereunto she maketh answer, and afterwards marrieth, the complainant may proceed against her husband and her without any bill of revivor: and her husband shall be bound by that answer which she made before marriage, because she shall not be admitted to take advantage of her own act.

Where (on the contrary) if a feme sole exhibit her bill of complaint, whereunto the defendant answereth, and afterwards she taketh an husband, her husband and she shall not proceed against the defendant without a bill of revivor; because her suit is abated by her own act, whereof the defendant may take advantage.

And if a man and his wife exhibit a bill of complaint, whereunto the defendant answereth, and the man dieth, the woman shall be at her choice whether she will exhibit a new bill, or proceed upon the former.

Note that in Chancery you cannot serve the wife without her husband, though the matter in question do only concern her, and not him.

[14] Also, if two seised of joint estate; or two executors of one testament; or two obligors or obligees exhibit a bill of complaint, whereunto the defendant answereth, and one of them dieth, the survivor of them may proceed against the defendant, without any bill of revivor.

And in all cases where a bill of revivor is requisite after the said bill exhibited, and a *subpœna* served on the defendant to that purpose; the complainant shall be in the same case as he for his predecessor was at the time when the cause of revivor accrued, unless the defendant shall appear upon the said *subpœna;* and by way of answer shew good cause to the contrary: which cause must be, that the complainant in the bill of revivor is not heir or executor, nor standeth in the like case, nor have the like interest, or the like cause of complaint, as before in the former suit: And

And no other cause is to be allowed.

If the complainant exhibit his bill of complaint for title of any lands, not of the yearly value of forty shillings: and the same be proved by affidavit, or deposed, the defendant shall be dismissed. [15]

Also, if the defendant demur to any bill exhibited against him, or disclaim, the complainant cannot reply:

For if the defendant be called up by *subpœna ad Rejungendum*, having before made no other answer but a demurrer or a disclaimer, he shall have costs for unjust vexation.

But after the defendant hath answered, the complainant hath liberty all that term, and all the next term following that; and until the beginning of the second term after answer, to put in his replication.

The next term after answer put in, the defendant's attorney may give the plaintiff a rule to reply, and if he doth not reply, then costs are awarded, and if he give no rule, and the plaintiff reply not the second term after the term the answer was put in, the bill may be dismissed with costs by mortgage or of course.

But if the complainant's replication be put into the Court, the defendant can have no costs allowed unto him.

But

[16] But then the defendant may, if he will, *Rejoin gratis* to the *Replication*, and enforce the complainant to go to commission.

Which if the complainant refuse, the defendant may have commission to examine witnesses on his own part against the complainant, and shall have the carriage thereof.

The commission shall be directed to four such persons as the defendant shall name; or to any three or two of them, without any warning to be given to the complainant.

But if in this case the complainant will, he may join in commission, and have the carriage of it himself.

And then he must name four commissioners indifferent men, and the defendant four more; and two being struck out on each side the commission is made up of the four that remain: and the complainant having the carriage of the commission must give the defendant fourteen days' warning of the day and place when and where the commission shall be executed.

This warning must be given, either by himself in person, or else left in writing,
[17] at the house or place where the defendant doth most reside.

The complainant in all cases of commission

mission to examine witnesses, shall have the first choice of commissioners, and carriage of the commission, and if he fail by not executing it, then the defendant may renew it, and have the carriage thereof, and give the complainant the like notice.

If a defendant be served with a *subpœna ad Rejungendum*, and oath be thereof made; commissioners' names being called for in the term time to the defendant's attorney, and the defendant refuse to join in commission the second seal after the term, the complainant's attorney may make a commission *ex parte* to the complainant's own commissioners and interessers must be included in the commission.

He shall examine Witnesses in all these cases following: (viz.)

First, upon a bill by him preferred to examine witnesses in perpetual memory of the matter to command the defendant either by himself or by his attorney to appear immediately; and within fourteen days to shew cause why the complainant should not examine witnesses in perpetual [18] memory.

And if the defendant do thereupon appear by himself, or his attorney, and

shew good cause to the contrary, such as the Court shall allow, then the complainant shall not examine any witnesses *in perpetuam rei memoriam*, or perpetual memory.

But if he do shew no sufficient cause, nor join in commission with the complainant, then the complainant's attorney must prefer six commissioners' names to the Lord Keeper, or the Court, &c. Four of the which, or four such other, as the Lord Keeper or the Court shall appoint, shall be set down for commissioners; and a commission for the complainant shall be made forth, and directed to the said four commissioners, or any three or two of them, to examine witnesses, according to certain articles heretofore set down in Chancery, which witnesses are never to be published, during their lives, unless oath be made.

That the complainant hath some trial wherein he should give them in evidence.

That the witnesses are not able to travel to the place where the trial should be.

[19] Or the party defendant will consent thereunto.

Neither can they be given in evidence against another, but against the party which was called, to shew cause why the said witnesses should not be examined, or some other, claiming under him by some interest

interest which accrued unto them, after the bill preferred by the complainant for the examination of witnesses.

It is also used, that either party, after the bill is exhibited, and answer made thereunto, may examine witnesses in Court here before one of the examiners.

But the complainant can have no commission to examine his witnesses, unless and before the defendant be served with a *subpœna ad Rejungendum:* Which *subpœna* must be served in such manner as is before mentioned:

And then upon affidavit made of the serving thereof, the complainant (if the defendant appear not that term) shall have a commission directed to four such commissioners as himself shall name, or to any three or two of them, for the examination of witnesses on his part, against the defendant, without any warrant to be given to the defendant.

Upon the return of the said *Subpœna ad Rejungendum*, the complainant may give to the defendant a day to *rejoin*, (*viz.*) the same day seven-night. [20]

By which time, if the defendant do not rejoin, he shall lose the benefit thereof.

And when that day so given to rejoin is past, the complainant may give two ordinary days, (*viz.*) two returns, for the defendant to produce his witnesses; and then a peremptory day:

Before

Before which day past, if the defendant do come in, he may have a commission to examine witnesses of course, without any motion; but he shall lose the benefit of rejoinder: and the complainant, if he please to join in the commission, shall have the carriage of it, giving to the defendant fourteen days' warning of the day and place, when and where the said commission shall be executed.

In the joining of this commission, the complainant must first name one commissioner, unto whom the defendant may give general exception:

The defendant must name the second; the complainant the third; and the defendant the fourth.

[21] *The common exceptions which be given to Commissioners are these:* (viz.)

That the commissioner named is of kindred or allied to the party for whom he is named:

That he is a master to the party:

That he is a landlord unto him:

Or a partner unto him:

Or have suit in law with the adverse party to him, by and for whom he is named:

Or is it of counsel, an attorney, or a follower of the cause of the one party:

Or

Or to whom the party is indebted:

Or any other apparent cause of partiality, or siding with either party.

And it is commonly used, that either party may give exception to one, and they seldom give exception to any more than one, on either party.

And yet, nevertheless, the complainant's attorney may, if the complainant will, renew the said commission also, and give the like warning also unto the defendant, if the defendant renew it not.

Upon the execution of either of which commissions, and return whereof, either of them may give to the other a rule for publication, thus, (*viz.*) *dies dat' defend' publicat. super commis. junct.* If the defendant give the rule, then thus, *dies dat' quer pro public. super commis. junct.* [22]

The day so given is one week, which being expired, and no cause shewed to the contrary, then publication is granted; and neither party can examine any witnesses afterwards, unless it be by special order of the Court; which is never granted without an oath made, that the party which requireth the same, nor any of them, hath seen or been made privy to any examination of any of the witnesses formerly examined in this Court by either of the parties: and some good cause be shewn, either by oath, or certificate

ficate of commissioners, why the party could not get his said witnesses examined within the time limited for their examination.

In which case sometimes the Court giveth order to examine witnesses by a time prefixed, with this *proviso*, that the party shall not in the mean time see the said former examination.

[23] And sometimes the Court giveth order, that the said party shall examine his witnesses, to inform the conscience of the judge only, and not otherwise.

These depositions are never published but by especial order or consent of the parties; but delivered to the judge, sealed up by the officer, under whose custody they do remain, to the end he may peruse them.

If any one be called by a *subpœna* to appear in this Court: And upon his appearance the complainant or any other doth arrest him in any other Court; he shall have a *supersedeas* to discharge the action, because he must have free going and free coming.

But it is not so, if the complainant be arrested, except it be after issue is joined, and a day is given for the matter to be heard. And the complainant coming to the Court, with evidence to maintain his cause, is arrested; the Court in this case shall

shall defend him, and set him free to follow his suit.

But this is seldom seen: And he that is plaintiff in the other Court may declare against him here *præsentem in curia*, if he please. See 37 *Eliz.*

If any one which hath privilege in [24] *Chancery* arrested into another Court, in a joint action with his wife, for matter concerning her: Notwithstanding the coverture, she shall not have any benefit of privilege here. See *Powle's case.*

The clerks of *Chancery* are to be sued in this Court, either by Latin or English plea.

The order made and ordained by Sir Nicholas Bacon, *Knight, Lord Keeper of the Great Seal, touching the examination of witnesses* (in perpetuam rei memoriam), *dated the* 10*th of December, in the third year of the late Q.* Eliz. *followeth.*

First, the commissioners shall examine no witnesses, but such as be aged and impotent.

Item, the complainant, or party who sueth forth the commission, shall give warning by precept from the commissioners, unto the party that should take prejudice by this examination, by the space

space of fourteen days at the least, of the time and place when and where the said commissioners will sit upon this commission.

[25] And the same warning being so given, the commissioners are to be satisfied by the oath of the party complainant, or of some other credible person, that warning is given accordingly, before they shall proceed to the execution of their commission.

Item, If the party adversant, or defendant, can shew before the commissioners good cause of exception, either against the witnesses produced by the complainant or any of them, or against the commissioners themselves or otherwise, then they shall cease and forbare any farther execution of the commission.

And the commissioners shall certify and return the said causes and exceptions up with the commission.

Item, If the party adversant cannot shew sufficient cause (as aforesaid), then the commissioners shall proceed to the examination of witnesses; and the party adversant or defendants shall have liberty to join in the examination of the same witnesses, or of any other, likewise upon interrogatories on his behalf (if he think good).

Item, The commissioners shall certify in

in their return of the commission, such [26]
acceptations as the defendant shall take against the proceeding in the same commission, and whether the defendant did appear or no?

And if the defendant did not appear, they are likewise to certify and return, whether affidavit were made of the giving of warning by precept as aforesaid or no?

Orders to be observed before the granting of Publication of the said Commission.

The party who prayeth publication, shall first by himself, or some other, make oath that the depositions of the same witnesses are necessarily to be given in evidence on his behalf.

Item, Oath also must be made, that the same witnesses be either dead, or so aged or impotent as they cannot travel to testify (*viva voce*) without danger of life.

Item, This oath being so taken, a Master of the *Chancery* must first open the commission, and consider whether this order before mentioned hath been observed in all points: wherein he being [27]
satisfied, publication is thereupon to be granted.

Provided always, that no depositions shall be given in evidence, but against those persons that were warned by pre-

cept (as aforesaid) or against their heirs or assigns.

And provided also, that after examination had and taken (as aforesaid), and after publication had and granted of the same examinations: The party adversant, or defendant, shall not be admitted to have any new examination on his behalf, concerning the same matter.

Item, This order is to be observed in case where the commission is *ex parte querentis* only, and it is to be engrossed in parchment, and subscribed with the hand of the register, and to be annexed to every of the said commissions, but not otherwise.

For if the defendant join, then these articles shall not need.

[28] *The difference used between a Joint Commission in the aforesaid nature, and a Commission* ex parte *followeth.*

The joint commission is made in form, as all other general commissions to examine witnesses, *Super Interrogator, ministrand*, be, adding to the end of the same, these words: (*viz.*) *In perpetuam rei memoriam permansur.*

This commission *ex parte* is to have these rules inserted under the register's hand, and the commissioners' names are specially

specially to be assigned by the Lord Keeper or Lord Chancellor for the time being.

Termino Michaelis, Anno Regni Elizab. *Reg. Sext.*

Memorandum, That all injunctions granted for preservation of possession during the suit in the Court of Chancery, shall have this clause and condition contained in them: (*viz.*) That the party who prayeth possession was in possession at the time of the bill exhibited, and certain years before; and that his interest is not [29] determined by forfeiture, surrender, or other lawful means.

And bond must be put in by the party who prayeth the possession, of the penalty of ten pounds, with condition that this information aforesaid is true.

Item, That all injunctions granted for the stay of suits at the common law shall have this clause and condition contained in them: (*viz.*) That the same suit desired to be stayed, is for and concerning the same matter depending in this Court, and as were begun at the common law, after the bill exhibited into this Court; and that bond be put in (as aforesaid).

Item, That no special *certiorari* do pass without bond first given, on the behalf

behalf of the party who desireth the same; with condition that the bill exhibited containeth matter sufficient to bear a *certiorari*, and that he shall prove the contents of this bill to be true, within fifteen days after the return of the writ, according to the order and course of this Court.

And that upon the granting of every *procedendo*, the bond aforesaid be remembered to the Lord Keeper.

[30] *Termino Trinitatis, Anno Regni* Elizab. *Reginæ Septimo.*

The process now is made returnable but three days before the hearing.

It is ordered, that all suits for no more than six acres of land, or less, except the same be worth forty shillings by the year, and all suits for matter under the value of ten pounds, shall be dismissed this Court, for such cause only proved. And this Court shall not retain any such: But the party who bringeth the same hither shall pay costs to the defendant, as this Court shall award.

Termino Michaelis, Anno Regni Elizab. *Reg. Septimo.*

It is ordered, that all process to bear judgment be returnable six or seven days before the day of hearing, and not above, saving

saving in the beginning of the term, when the time will not permit so long warning.

And the said writs must be indorsed on the back side, with the very day appointed for the hearing of judgment. And so much for that term.

By the general custom and ancient usage of this Court, all bills shall be retainable here, in case where the equity of the cause requireth and beareth it, and wherein the common law doth afford no relief, but rather pressure and rigour. [31]

After publication once had the complainant may procure a day of hearing of course, by such as one of the Six Clerks as dealeth for him. And he may at the end of the term, when the Lord Keeper setteth down the days of hearings, procure his hearing to be set down amongst those assigned for the next succeeding term.

This was wont to be ancient course of procuring of hearings, howsoever it was lately disused and (as I take it) the same is now restored again to the good contentment of all suitors in this Court.

The Order of Proceedings against such as refuse to obey His Majesty's Injunctions, proceeding and issuing out of the Court of Chancery.

For the breach of an injunction, this is the course commonly.

 If

[32] If the *contemptor* do not upon sight of the injunction obey the same, but doth commit some act in contempt or neglect thereof, then upon an affidavit made of the serving of the said injunction, and of the breach thereof, then an attachment is awarded against the said contemptor, &c. as in the case of process, before mentioned and declared, and so further process to common rebellion and serjeant at arms, &c.

The modern Orders and Ordinances of Chancery follow.

AFFIDAVITS.

No *affidavit* shall be admitted or taken which shall tend to the proof or disproof of the title or matter in question, or touching the merits of the cause.

Neither shall any such matter be colourably inserted, in any *affidavit* to be made touching the serving of process.

No *affidavit* shall be taken against *affidavit*, so far as the Master of *Chancery* can discern, or take knowledge, &c.

[33] If any such be taken, the latter shall not be used or read in Court.

CONTEMPTS.

In case of contempts, granted upon force or ill words, used upon serving of process, or

or other words of scandal, proved by affidavit, the party forthwith upon motion will be committed, if the words spoken deserve it.

But for other contempts against the orders or decrees of the Court.

First, an attachment goes forth upon *affidavit* made.

Then the party being taken is to be examined upon interrogatories.

His examination is to be referred, upon motion, to one of the Masters of the *Chancery*.

And if, upon examination, he confess matter of contempt, he is to be committed upon the like motion.

If he confess it not, the adverse party may upon like motion and order examine witnesses to prove the contempt.

And if the contempt appear upon proof, the contemptor is to be committed therefore, upon motion and order likewise.

But if the adverse party fail to prove the said contempt, or fail to put in his interrogatories or other prosecution, then the party charged with the contempt is to be discharged upon motion with good costs. [34]

Imprisonment upon *contempts* for matters past, may be discharged of grace, after sufficient punishment: Or it may be otherwise dispensed withal in such case.

But if the imprisonment be for performance of any order of the Court in force:

force: Then the *contemplator* ought not to be discharged, except he first obey; only the contempt may be suspended for a time.

PETITIONS.

No *injunctions*, *sequestration*, *dismissions*, *retainer* upon *dismissions*, or *final orders*, shall be granted upon petitions.

No former order made in Court is to be altered, crossed, or explained, upon any petition: But such orders may be only stayed upon petition for a small time, till
[35] the matter may be moved in Court.

No *commissions* for examination of witnesses shall be discharged, nor any examinations or depositions of witnesses shall be suppressed upon petition, unless it be first referred, and certificate be made thereupon.

INJUNCTIONS.

Injunctions for possession or for stay of suits after verdict, are to be presented to the Lord Keeper, or Lord Chancellor, being together, with the orders whereupon they go forth; that his Lordship may take consideration of the orders before he sign them.

No *injunction* of any nature shall be granted, revived, dissolved, or stayed upon private petition.

No

No *injunction* to stay suits at the common law shall be granted upon priority of suit only:

Or upon the surmise of the complainant's bill only.

But upon matter confessed in the answer of the defendant.

Or matter of record. [36]

Or writing plainly appearing.

Or when the defendant is in contempt for not answering.

Or when the debt desired to be stayed appeareth to be old, and hath slept long.

The creditor and the debtor have been dead some good time, before the suit brought.

Where the defendant appears not, but sits an attachment: Or when he doth appear and departs without answer, and is under attachment for an answering: Or where he takes oath that he cannot answer without sight of evidences in the country: Or absenting himself in one private place, or beyond sea, and cannot be found to be served with a *subpœna*, upon oath made, an injunction is usually granted.

In all these cases, an *injunction* may be granted, for stay of suits at the common law, until the party answer, or appear in person in Court, and the Court give further order.

An *injunction* never is dissolved without motion on the adverse part.

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PETITIONS.

[illegible] *dismissions*, [illegible] or *final orders*, [illegible] petitions.

[illegible] Court is to be [illegible] or explained, upon any [illegible] such orders may be only [illegible] for a small time, till [illegible] be moved in Court.

[illegible] examination of witnesses [illegible] be discharged, nor any examination [illegible] of witnesses shall [illegible] petition, unless it be [illegible] be made there-[illegible]

MOTIONS.

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In the case aforesaid, where an *injunction* is to be granted, for stay of suits at
[37] the common law; if the like suits be in the *Chancery*, either by *scire facias* or by *privilege*, or *English* bill; then the suit is to be stayed by order of the Court, as it is in other Courts by *injunction*.

An *injunction* is usually granted, if the party defendant be in contempt, or matter confessed, though after an arrest or further proceedings at law without bringing money into Court.

Injunctions for *possession* are not to be granted before a *decree*, but where the possession hath continued by the space of three years past before the bill exhibited, and upon the same title, and not upon any title by leave or determined.

In case where the defendant sits all the process of contempt, and cannot be found by the serjeant at arms, or resists the serjeant, or make rescues, a sequestration shall be granted of the land in question, and if the defendant do not render himself within the year, then an *injunction* shall be granted for the possession.

Injunctions against the felling of timber, or ploughing up of ancient pastures, or for the maintaining of inclosures, or the like,
[38] shall be granted according to the circumstances of the case, but not in case where the defendant, upon his answer, claimeth a state

state of inheritance, except it be where he claimeth the land in trust, or upon some other special ground.

Injunctions shall be inrolled, or the *transcripts* thereof be filed.

ORDER.

Where any order shall be made against the general rules of the Court, there the *register* shall plainly and expressly set down the particular reasons and grounds, moving the Court to vary from the general rule.

No order of the public Court is alterable upon *petition: vide* in the title Petition.

REGISTER: ORDER.

The *registers* are to be sworn.

If any order shall be made, and the Court not informed of the last martial order formerly made, no benefit shall be taken by such order, as being granted by abuse, and surreption: and to that end, the *register* ought duly to mention the last former order in the present order. [39]

No order shall be explained upon any *petition*, but only in Court as they are made, and the *register* is to set down the orders, as they are pronounced by the Court, truly, at his peril, without troubling the

the Lord Keeper, or Lord Chancellor, by any private attending of him, to explain his meaning; and if any explanation be desired, it is to be done by public motion, where the other party may be heard.

No draft of any order shall be delivered by the *register* to either party, without keeping of a copy by him: to the end that if the order be not entered; nevertheless the Court may be informed what was formerly done, and not be put to a new trouble; and to the end also that knowledge of orders be not kept back too long from either party, but may presently appear at the office.

Where a cause hath been debated upon the hearing of both parties: and opinion hath been delivered by the Court; and nevertheless, the cause referred to treaty: [40] the registers are not to omit the opinion of the Court in drawing of the order of reference, except the Court do specially declare that it is to be entered without any opinion either way.

In which case, nevertheless, the *registers* are out of their short notes to draw up some more full remembrance of that which passed in Court, to inform the Court if the cause come back, and cannot be agreed.

The *registers* upon delivery of the draft of any order unto the counsel of either party,

party, are not to respect the interlineations or alterations of the said counsel, (be the said counsel never so great) further than as to put them in remembrance of that which was truly delivered in Court; and so to conceive the order upon their oath and duty, without any other or farther respect.

The *registers* are to be careful in the penning and drawing up of *decrees;* and especially in matters of difficulty and weight; and therefore, when they present the same to the Lord Keeper, or Lord Chancellor, they ought to give him understanding which are such *decrees* of weight, that they may be read and reviewed, before his Lordship sign them. [41]

DECREES.

The *decrees* or dismissions made or granted in the Rolls, and those that are made in Court at *Westminster*, on *Wednesdays* or *Fridays*, when the Lord Keeper is not present (being drawn up) and first to be signed by the Master of the Rolls, or the Judge that sat at the hearing of the cause, and then presented to the Lord Keeper to be likewise signed; which being done, then the same are to be enrolled.

No *decrees* shall be reversed, altered, or

explained, being once enrolled, but upon bill of *review;* and no bill of *review* shall be admitted, except it be upon error in law, appearing in the body of the *decree*, without farther examination of matters in fact, or he shall shew some new matter which hath risen in time after the *decree*, and not any new proof, which might have been used when the *decree* was made.

Nevertheless, upon new proof which is come to light since, and after the *decree* made, and could not possibly have been [42] used at the time when the *decree* passed, a bill of *review* may be granted by the special licence of the Court, and not otherwise.

Also upon a bill of *review* the party complainant is to put in security before one of the Masters of the Court, to stand to, and perform the order of the Court, upon the hearing upon such bill of *review*.

In case of miscasting, being a matter demonstrative, a *decree* may be explained, and reconciled by an order without bill of *review*.

Where note, that by the word *miscasting* is not intended any pretended *miscasting* or misvaluing, but only error in auditing or numbering.

No bill of *review* shall be admitted, or any other new bill to change matter decreed, except the *decree* first obtained be performed:

performed: and if it be for land, that the possession be yielded: if it be for money, that the money be paid: if it be for evidence, that the evidence be brought in; and so in other cases which stand upon the strength of the decree alone.

But if any act be desired to be done, which extinguisheth the party's right at the [43] common law (as making of assurance and release, acknowledging of satisfaction, cancelling of records or evidence, and the like), those parts of the decree are to be spared until the bill of *review* be determined: but such sparing is to be warranted by public order made in Court.

No decree shall be made upon pretence of equity, against the express provision of an act of parliament.

Nevertheless, if the construction of such act of parliament hath for a time gone one way in general opinion and reputation; and after by a latter judgment hath been controlled: then relief may be given upon matter of equity for cases arising before the said judgment: because the subject was in no default.

Imprisonment for breach of a decree is in nature of an *execution*, and therefore the custody ought to be straight, and the party not to have any liberty to go abroad, but by special licence of the Lord Keeper or Lord Chancellor being; but no close imprisonment

prisonment is to be but by express order for wilful and extraordinary contempts and disobedience (as hath been used).

[44] In case of obstinate disobedience in the breach of a decree, an *injunction* is to be granted, *subpœna* of a sum : and upon *affidavit*, or other sufficient proof of persisting in contempt, fines are to be pronounced by the Lord Keeper or Lord Chancellor in open Court, and the same are to be estrated down into the hanaper by special order.

In case of a deceee made for the possession of land, a writ of *execution* goeth forth, and if that be disobeyed, then *process* of *contempt*, according to the course of the Court, is to go forth against the person unto the commission of rebellion ; and then a serjeant at arms by special warrant : and in case the serjeant at arms cannot find him, or he be resisted, or if he upon his commitment do persist in his disobedience, an injunction is to be granted for the possession, and in case that it also be disobeyed, then a commission is to be made to the sheriff, to put his adversary into possession.

Where the party is committed for breach of a decree, he is not to be enlarged, until the decree be fully per-
[45] formed in all things which are to be done presently.

But

But if there be other parts of the decree to be performed at days or times to come: then he may be enlarged by order of the Court, entering into recognizance with sureties for the performance *de futuro*, but not otherwise.

Where causes come to hearing in Court, no decree bindeth any person who was not served with process *ad audiendum judicium*, according to the course of the Court.

No decree bindeth any one that cometh in *bonâ fide*, by conveyance from the defendant before the bill exhibited; and is made no party either by bill or by order.

But where he comes in *pendente lite*, and while the suit is in full prosecution, and without any colour of allowance, or privity of the Court: there regularly the decree bindeth.

But if there were any intermission of suit, or the Court were made acquainted with the conveyance, the Court is to give order upon the special matter according to justice.

Where a *decree* made for a rent to be paid out of land, or a sum of money to be levied upon the profits of land; there a *sequestration* of the same land being in the defendant's hand, may be granted upon the *decree*.

 Where

Where the *decree* of the *provincial* counsels, or the Court of *Requests* or the like, are by contumacy or other means interrupted: there the Court of *Chancery*, upon a bill preferred for corroboration of the *decrees* of that jurisdiction, shall give remedy.

Where any cause come to hearing here which hath been formerly *decreed* in any other of the King's Courts of Justice at *Westminster;* such decree shall be first read, and then this Court shall proceed to hear the rest of the evidences on both sides.

Decrees uponsuits brought after judgment shall contain no words to make void or weaken the judgment: but shall only correct the corrupt conscience of the party, and rule him to make restitution, or to perform other acts, according to the equity of the cause.

[47] BILL OF REVIEW.

Decrees are not to be reversed, altered, or explained, being once enrolled, but upon bill of *review*.

Bill of *review* shall not be admitted, except the decree be first obeyed and performed.

No bill of *review* shall be put in, except the party that prefers it enter into *recognizance*

nizance, with sureties for the satisfying of costs and damages for the delay, if it be found against him.

REFERENCE: REPORT.

No *reference* upon a demurrer, or question touching the jurisdiction of this Court, shall be made to the Masters of the *Chancery*, but such demurrer shall be heard and ruled in the Court, or by the Lord Keeper or Lord Chancellor himself.

For the confirming or ratifying of any *report*, no order shall be made, without day to be given by the space of a sevennight (at least) to speak unto it in Court.

No *reference* shall be made to any [48] Master of the Court, or any other commissioner or commissioners, to hear and determine, where the cause is gone so far as to examination of witnesses; except it be in special cases of parties near in blood, or of extreme poverty, or by consent.

And generally, *references* of the state of the cause are to be sparingly granted, except it be by consent of the parties.

No *report* shall be respect in Court which exceedeth the warrant to the order of *reference* which leadeth it.

The Masters of the Court are required that by report they do not certify the state of the cause; as if they would make *breviates*

breviates of the evidence on both sides, which doth little ease the Court; but that they do it with some opinion: or otherwise, in case they think it too doubtful, to give opinion there; and thereupon they are to make such special *certificate*, and the cause is to go on to a judicial hearing, without respect had to the same.

[49] If both parties consent to a *reference* for the examination of accounts to make the cause more ready for hearing, it may be granted. But generally matters of account, excepting in very weighty causes, are not fit for the Court, but are to be prepared by reference, with this provision nevertheless: that the causes come first to hearing, and upon the entrance into a hearing, they may receive some direction, and be turned over to be considered and prepared.

The like course of reference is to be taken for the examination of Court Rolls upon any customs; and the copies shall not be referred to any one Master, but to two Masters at the least.

No reference shall be made of the insufficiency of any answer, without shewing of some particular points of the defects thereof, and not upon surmise of the insufficiency generally.

If a complainant take exception to a defendant's answer, he must deliver his exceptions to the defendant's counsel or attorney

attorney; and if the defendant within eight days amend his answer, he is to pay no costs; but if he do not, then a reference is to be had to a Master of the Court, and if he report the answer insufficient, then the complainant may take out two [50] *subpœnas* against the defendant, one for twenty shillings costs, and the other to make a better answer.

Where a trust is confessed by the defendant's answer, there needeth no farther hearing of the cause, but a reference presently to be made of the accounts, and so they are to go on to the hearing of the accounts.

DISMISSION.

Where causes are dismissed upon full hearing, and the dismission signified by the Lord Keeper or Lord Chancellor, and enrolled, such causes shall not be retained again, neither shall any new bill be admitted, except it be upon new matter, like unto the case of the bill of review.

In case of all other dismissions which are not upon hearing of the cause, if any new bill be brought, the dismission is to be pleaded; and after reference and report of the contents of both suits, and consideration taken of the cause or causes of the former dismission; the Court shall rule and order the retaining or dismission [51] of

of the new bill, according to justice, and the nature of the case.

All suits grounded upon wills *nuncupative*, leases *parol*, or upon long leases, that tend to the defeating of the King's tenures, or for the establishing of the perpetuities; or granted upon remainder over unto the crown, to defeat purchasers; or for brocage, or rewards to make marriages; or for bargain at play; or wagers for bargains for offices, contrary to the statute of the second of *Edward* 6; or upon contracts for usury or simony, are regularly to be dismissed upon motion, if they be the whole matter of the bill; and there be no special circumstances to move the Court to allow them a proceeding.

And all suits under the value of ten pounds, are regularly to be dismissed.

Dismissions are properly to be prayed and had, either upon hearing, or upon plea unto the bill, when the cause comes first into the Court.

But dismissions are not to be prayed after the parties have been at charge of [52] examination of witnesses, except it be upon special cause.

If the complainant discontinue prosecution, after all the defendants have answered, above the space of one whole term, the cause is to be dismissed of course without motion.

But

But after replication is put in, the cause is not to be dismissed without motion and order of the Court; and that motion is not to be made till four terms after the replication put in, and that in case there have been no proceeding after the replication, either by motions, references, examination of witnesses, or the like:

For double vexation, the cause may be dismissed.

Where causes are removed by special *certiorari*, upon a bill containing matter of equity, the complainant is upon receipt of his writ to put in bond to prove his suggestions within fourteen days after the receipt, which if he do not prove, then upon certificate from either of the examiners, presented to the Lord Keeper or Lord Chancellor, the cause shall be dismissed with costs, and a *procedendo* shall be granted. [53]

DEMURRER.

Demurrers and *pleas* which tend to the discharging of any suit, shall be heard first upon every day of orders, that the subject may know whether he shall need to give further attendance or no.

A demurrer is properly upon matter defective contained in the bill itself, or foreign matter.

But

But a plea is of foreign matter, to charge or stay the suit; (as)

That the cause hath been formerly dismissed;

That the complainant is outlawed;

That the complainant is excommunicate;

That there is another bill depending for the same cause;

Or the like.

And such plea may be put in without oath, in case where the matter of plea appears upon record, but if it be any thing which doth not appear upon record, then the plea must be put in upon oath.

No outlawry shall be allowed, without pleading record *sub pede sigilli:* nor plea of excommunication without the seal of the ordinary.

Where any suit appeareth upon the bill to be of the nature of any of those which are regularly to be dismissed, according to the order before mentioned, the said order is to be set forth by way of demurrer.

ANSWER.

Where an answer shall be certified to be insufficient, the defendant is to pay costs.

And if a second answer be returned insufficient

insufficient in the points before certified for insufficient, then he shall pay double costs.

And upon the third like case, treble costs.

And upon the fourth, quadruple costs, and then to be committed also till he shall have made a perfect and sufficient answer, and he shall be examined upon interrogatories touching the points defective in his answer.

But if any answer be certified to be sufficient, then the complainant is to pay [55] costs.

No insufficiency of answer can be taken hold of, after replication put in, because it is admitted for sufficient by the replication.

An answer to a matter charged as the defendant's own fact, must be direct, without saying that *it is to his remembrance*, or *as he believeth*, if it be laid down to be done within seven years before.

And if the defendant do deny the fact, then he must traverse it directly, and not by way negative pregnant.

As if a fact be laid to be done with divers circumstances, the defendant may not traverse it literally as it is laid in the bill, but he must traverse the point of substance.

So as if he be charged with the receipt

of an hundred pounds, he must traverse that he hath not received an hundred pounds, or any part thereof; and if he have received any part of it, he must set down what part he hath received.

If a hearing be prayed upon bill and answer, the answer must be admitted to be true in all points.

[56] And a decree ought not to be made, but upon hearing of the answer read in Court.

Where no counsel appears for the defendant at the hearing, and the process appears to have been served, the answer of such defendant is to be read in Court.

No new matter is to be contained in any replication, except it be to avoid matter set forth in the defendant's answer.

THE FEES

OF

Proceeding in Chancery,

FOLLOW.

Subpœna writ to answer, 2*s.* 6*d.*

If there be three in the *subpœna*, you pay six-pence the more, *tot.* 3*s.* 4*d.*

This *subpœna* may be served in any liberty whatsoever, so cannot an attachment.

The attorney's fee, 3*s.* 4*d.*

The attachment where the defendant appeareth not, 2*s.* 10*d.*

The breaking of it up with the sheriff, 2*s.*

The return of that attachment, 4*d.*

The proclamation of allegiance upon the same, 2*s.* 10*d.*

The breaking of it up with the sheriff, 2*s.*

The return of that proclamation, 4*d.*

The commission of rebellion, 18*s.* 2*d.*

The rule which the complainant gives to the defendant to make answer by a certain day, in case where the defendant doth appear, 4*d.*

As

As also for each rule of publication after examination of witnesses, 4*d.*

And for entering them in the register, 4*d.* apiece.

The attachment, the proclamation, commission of rebellion. } For not answering, as in case for not appear. } as aforesaid.

The defendant's appearance, 3*s.* 4*d.*

This is also his attorney's fee for the whole term. *Feod. Attourn.*

The copy of the bill, at eight-pence the sheet.

For the oath made that this answer is true, 4*d.*

For every defendant, 4*d.* *pro consimil. quilibet bef. pro consimil.*

For the commission to take the answer in the country by *dedimus potestatem*, 7*s.* 10*d.*

Besides the engrossing of the bill, which is included within it, every sheet *inde*, 6*d.*

The *subpœna* for costs, given to the defendant, in case where the complainant doth not put in his bill within the time allowed, 2*s.* 6*d.*

For a bill of costs and entry of it, *inde*, 2*s.* 4*d.*

The attachment, proclamation, and commission of rebellion, as in case aforesaid.

A joint commission to examine witnesses in the country, 7*s.* 10*d.*

For which the plaintiff pays, 7*s.* 10*d.*

And the defendant, 6*s.* 8*d.*

Besides the term fees of 3*s.* 4*d.* apiece.

A commission *ex parte* to examine witnesses in the country, 7*s.* 10*d.*

For examination of the first witness here before examiners, 2*s.* 6*d.*

For every witness examined afterward, 2*s.* 6*d.*

For drawing of the replication, if it be done by counsel, as in case for the bill, *as for the bill.*

For the rejoinder, the like.

If there be no new matter in the replication of the rejoinder, your attorney's clerk will draw them for you of course, for some small matter, *as you can agree.*

For the copies of the depositions of any witnesses returned by commission, 8*d.* every sheet.

For copies of depositions taken in the Examiner's Office, 12*d.* a sheet.

For a motion in Court, counsel fee.

For the drawing of the order thereupon, *cum Cop.* 3*s.* *every side.*

For entering of the order, every side, 6*d.*

Fees of an Injunction follow.

Injunction in all *viis & modis*, 1*l.* 2*s.* 6*d.*

Fees

Fees of a Decree follow.

For a decree the drawing, &c. *as in case of an order.*

Subpœna to testify, 2*s.* 6*d.*

Subpœna to rejoin, 2*s.* 6*d.*

Subpœna to hear judgment, 2*s.* 6d.

For getting the hearing to be set down, as you can agree with your attorney.

For the rules to publish the witnesses, being four, per piece 4*d.*

Besides four-pence apiece paid for entering in the register, 4*d.*

For copy of replication, rejoinder, rebutter, and sur-rebutter, as for copy of bill or answer, as aforesaid for bill and answer.

Subpœna super ordinem, to shew cause, 7*s.* 2*d.*

Subpœna of Ducas tecum, 7*s.* 2d.

Subpœna De executione ordinis, 10*s.*

The Charges of a Supplicavit *in Chancery.*

Item, the oath, 4*d.*

Item, the supplicavit itself, 5*s.* 6*d.*

Item, the warrant upon it, *vie* 2*s.*

Item, or the *centiorari* to certify the bond taken upon it, 2*s.* 6d.

The Charge of a Supersedeas *in Chancery.*

To the Master of the Chancery for taking of his bail, 2*s.*

For

For the warrant, 2*s*.
For the writ, 5*s*. 6*d*.
For the allowance of it, 2*s*.

The said fees be only of the case of a single person, and for the peace only.

But if it be of more persons, or for behaviour, as well as the peace, then the charge is accordingly enlarged.

FINIS.

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